Land-Lords Law:

A TREATISE

Very fit for the perusal of most Men.

BEING

A Collection of several Cases in the Law concerning Leases, and the Covenants, Conditions, Grants, Proviso's, Exceptions, Surrenders, &c. of the same: As also touching Distresses, Replevins, Rescous and Waste, and several other matters which often come in debate between Land-Lord and Tenant.

And also,

A compleat Table of the Chief Matters contained in this Treatise.

The Fourth Edition.

By *GEORGE MERITON* Gent.

Hor.

——*Si quid novisti rectius istis*
Candidus imperti, si non his utere mecum.

LONDON,
Printed for *Thomas Basset* at the *George* in *Fleet-street*, and *John Place* at *Furnivals Inn* gate in *Holborn*. 1681.

To all Gentlemen Land-Lords and other knowing persons of this Kingdom.

Worthy Sirs,

THis small Treatise (through the importunity of some Friends) being lately exposed to the publick view, and finding such Candid Acceptance as was beyond expectation, it hath emboldned me to adventure it a Third time to the publick Censure, this Impression having several hundreds of Additions, wanting in the former, and being also more methodical than the first Impression, to the which I have added a compleat Table of all the chief mat-

ters contained in this Treatise; if Gentlemen you please gently to censure or lovingly to correct what material or literal errors have either escaped the Authors Pen, or Printers Press, you will thereby much oblige,

Gentlemen,

Your humble

Servant,

George Meriton.

The Contents of the Chapters

CHAP. I.

CHAP. II.

CHAP. III.

CHAP. IV.

CHAP. V.

CHAP.

CHAP.

CHAP. XI.

CHAP. XII.

CHAP. XIII.

A perfect *Table*, shewing how many Years purchase a Lease or Annuity, to endure 30 years or under, is worth in ready money, at Interest upon Interest after the rate of six in the Hundred; and how to discount any Lease in being, with the true value of the Reversion after any number of years within the space of aforesaid.

Y. of a L.	Years.	Months.	D. parts.
1	0	11	0
2	1	9	9
3	2	8	1
4	3	5	9
5	4	2	5
6	4	11	0
7	5	7	0
8	6	2	5
9	6	9	6
10	7	4	3
11	7	10	7
12	8	4	6
13	8	10	3
14	9	3	6
15	8	9	5

The Explanation of the Table.

The first Column toward the left hand, sheweth the Years of a Lease, or Annuity; And right against each Year is the Years, Months, and Decimal parts of a Months purchase that such a Lease or Annuity is worth.

Y. of a L.	Years.	Months.	D. parts.
16	10	1	3
17	10	5	8
18	10	9	9
19	11	1	3
20	11	5	7
21	11	9	3
22	12	0	5
23	12	3	6
24	12	6	6
25	12	9	4
26	13	0	0
27	13	2	5
28	13	4	
29	13	7	1
30	13	9	2

Example

Example.

Suppose a man be to buy a Lease or Annuity of Twenty Pounds per annum, *which is to continue ten Years; I would know how many years purchase he may give in ready money for the same; now look into the Table on the left hand, and in the Column under the Title Years of a Lease, over against the Number 10. find 7. 4. 3. which sheweth that such a Lease is worth 7 Years, 4 Months, and 3 tenth parts of a Month purchase; which proportions being added together, amount unto One hundred fifty three Pounds, Three shillings and Four pence, which is the true value of such a Lease in ready Money.*

Again,

Again, *If a man be to take or buy the* Reversion *of a Lease or* Annuity.

Work thus,

Suppose the Lease be Twenty Pounds Per annum *for* 26 *Years in all*; *You find in the* Table *on the Right-hand over against* 26. *The Number* 13. *which is* 13 *Years purchase, that is* 260 *Pounds*; *and this it were worth were it in present possession: But then suppose there be another Lease in being, of* 7 *Years (or so) before yours Commence*; *what is it worth then in ready Money? In this case I look into the first* Column *for* 7. *and over against it I find* 5.7. *which is* 5 *Years, and* 7 *Months purchase, which amounteth to Three Pounds, Thirteen shillings and Four pence, which being taken out of Two hundred and sixty Pounds, there remains One hundred forty*

eight

eight pounds, Six shillings, and eight pence, which is Seven Year, and five Months purchase, and so much it is worth in ready money: This is very useful, and may easily be wrought by those who have but very small skill in Arithmetick, *&c.*

Land-

Land-Lords Law.

CHAP. I.

Of Leases who may make them, and for what Term; and who are called Tenants in Fee simple, Tenants in Tayl general, and special, Tenant in Tayl after possibility of Issue extinct, Tenant by the Curtesie, Tenant in Dower, Tenant for Life, Tenant for years, Tenant at will and sufferance, Tenant by Copy, and Tenant by the verge.

I Am verily perswaded that there are few Land-Lords nor Tenants, but they know what a Lease is, but it is very probable that many are ignorant of the reason why it is called a Lease: It will not therefore be amiss to set down its derivation.

Now Lease is derived from *Laxum* or *Lessum*, for that the lessee cometh in by lawful means, and *Dimittere* is in French *Laisser*, to depart with or forgo. *Bract. lib. 4. fo. 220. Fleta lib. 3. cap. 12. Co. on Lit. fo. 43. b.*

In every Lease there must be Lessor, and Lessee, he which lets the Land is called the Lessor, and he which takes or Farms it is called the Lessee. See Terms of the Law verb: Lessor and Lessee.

There be two sorts of Leases for years, that is a lease in writing, and a Lease Parol, which is a lease by word of mouth, and either of these is good, if it be of Lands and Tenements; but a Lease Parol of a Common, Office, Tithes, &c. is not good in Law.

For if a lease for years be made reserving Rent, it must be of Lands and Tenements, whereunto the Lessor may have resort to distrain. *42. Eliz. in C. B. Butts Ca. Co. 7, Rep. fo. 23.*

And therefore a Rent cannot be reserved, by a common person out of any Incorporeal Inheritance, as Advowsons, Commons, Offices, Corrodies, Mulkture of a Mill, Tythes, Fairs, Markets, Liberties, Franchises, &c. but if the Lease be

be made by Deed in writing of them, one may have an action of Debt by way of contract, but distrein one cannot: and if any Rent be reserved in such cases upon a Lease for life it is utterly void. 30 Ass. p. 5. 12. Ass. 20. 20 E. 4. 10. Cain Lit. fo. 47 a.

There is also another mischief in a Lease Parol, for if such a Lease be made to any, it behoves that he who makes it, be seised of the Lands and premisses at the time of such Lease made; for else the lessee that is the Tenant, may plead that the lessor had nothing in the premisses at the time of the lease made, and then the Land-Lord is barred of his Action; but if it be by Indenture in writing, then the Tenant cannot plead this Plea, therefore it is great wisdom in all Land-Lords to have their Leases in writing, whereby many inconveniences are prevented. See Lit. Tenures. lib. 2. cap. 7. Finch lib. 2. c. 2. pag. 139. 38. H. 8. Bro. Estoppel 8.

Note every Lease for years must be for a time certain, and ought to express the Term, and when it should begin, and when it should end. And yet there may be a certainty in an uncertainty sometimes, for the Rule is, *id certum est, quod certum reddi potest*: See some pretty Cases about

this Rule in the 4 chap. of this Book. *Jac. in C. B. Bishop of Baths case, Co. 8. Rep. fo. 34. 35. 40 Eliz. Rector of Chedingtons case, Co. 2. Rep. fo. 155, 156. Bro. Title 9 Co. Coke Lit. 43 b.*

If a man have a lease for 1000 years or 1000 years of Lands, it is but a Chattel, and falls to his executors or Administrators after his death if he do not otherwise dispose of it in his life time. *32 Hen. 8. c.*

All persons may regularly take Farms, except spiritual Persons, who are prohibited, unless it be for the maintenance of their Families. *21 H. 8. c. 13. Cowels Int. pag. 192.*

Every one seised of an absolute Estate in fee simple in his own right may make a lease for as many years as he pleaseth, provided it be not to a body politick, lest by exceeding it seem a device in Mortmain; as put Case it be a lease to a Body politick for 100 years, and so from 100 years, to 100 years, till 800 years be expired; this is Mortmain, say by the opinion of *Martin* if such a lease be made but for 80 years it is Mortmain and so this case the chief Lord may enter for the forfeiture, unless they have purchased Licence from the King and the

the full chief Lord. See 29 H. 8. Mortmain 39. 2 H. 6. fo. 5. Plow. fo. 220. D. and 223. E. 5 Rep. Sibbin pag. 55. b. and 199. b.

He who hath Fee Tail in his own right, or Fee simple in anothers right, as Bishops are in right of their Church, and Husbands in the right of their Wives, might also have made long leases before they were restrained by Statute. See 32 H. 8. C. 28. 13 Eliz. C. 10. 18 Eliz. Ca. 6. 1 Jac. C. 3.

Tenant in Tail, and the persons last mentioned, may make leases for three lives, or 21 years but no longer, but to the making good of such leases, there are nine things necessary to be observed.

1. The lease must be made by Deed Indented. 2. It must be made to begin from the making thereof, or from the day of the making. 3. If there be an old lease in being, it must be either surrendred, expired, or ended within a year of the making of the new lease, and the surrender must be absolute and not conditional. 4. There must not be a double lease in being at one time; for it must be either for 21 years or three lives and not for both. 5. It must be for no longer time then 21 years, or three lives, but it may be for a lesse

Term, or fewer years; 6. It must be of Lands, Tenements, or Hereditaments manorable or corporeal, which are necessary to be letten, and whereunto a Rent by law may be reserved, and not of things that lie in grant, as Advowsons, Faires, Markets, Franchises, &c. out of which a Rent cannot be reserved; 7. It must be of Lands and Tenements which have been most commonly letten by the space of 20 years next before the lease made; or if it be but 11 years at one or more times within these 20 years, it is sufficient; & upon every such lease, there must be reserved yearly during the term, payable to the lessors, their Heirs and Successors, &c. so much yearly Rent, as hath been most customably yielded and paid for the Land, within 20 years next before the making of such lease, or if it be more then the Ancient Rent it is good enough; 9. It must not be made to hold without impeachment of waste, *Co. on Litt. fo. 44. a. Wingates abr. Stat. pa. 290. Bro. Leases 47. vide Herns Law of conveyances pa. 66. 67. 68.*

And if the lease be thus made it binds the issue of Tenant in Tail, if he die before the Term be out: but if he die without

out

out Issue, the Donor may avoid the leafe by Entry; and so may he in Remainder, and though he accept the Rent, yet it shall not affirm the leafe. 32 H.8.28. *Noy's Maxims p.69.*

The Husband seised in Fee simple or Fee Tail in right of his Wife may make such a leafe of his Wives Land by Indenture in writing, in the name of the Husband and Wife, and she to seal thereunto; and the Rent must be reserved to the Husband and his Wife, and to the Heirs of the Wife, according to her Estate of inheritance: and this shall bind her and her Heirs after his death. *Co.on Litt. fo.44. Noys Maxims p.69. vide Finch.l.3.c.4.*

Bishops Deans and Chapters, &c. seised of Estate in Fee in right of their Churches, observing the Rules before mentioned, may make leafes for 21 years or three lives, and so may the Masters and Fellows of Colledges, and Wardens of Hospitals, of their Colledge Lands, if their private Statutes will permit. *Co.on Litt. fo.44.a. Parsons Law pa. 29. Cowells Inst. pa.189.13. Eliz. c.10.*

But the Colledges of the two Universities of *Eaton* and *Winchester*, are obliged to take the third part of their Rent in

Corn; yet are they not prohibited from letting freely those houses which they have in any City, Burrough, Town Corporate, or publick Market Town, with the Lands belonging to them, (provided they exceed not ten Acres, or be not the dwelling houses of the said persons) according to the common law of *England*, if it be not contrary to the private Statutes of their Colledges. 14 *Eliz. C.*11.18 *Eliz. C.*6. *Wingates abr. Stat.pa.* 292, 293. *Cowels Int.pa.*190.

Those who have Benefices cannot make a lease of the same for any time longer then they reside there; (the liberty of being absent 80 days every year, being always permitted them) for if they do, they forfeit a years profit of the Benefice, to be distributed by the Ordinary amongst the poor of the Parish; But every Parson allowed to have two Benefices, may let one of them (upon which he is not most ordinary resident) to his Curate only, but such lease shall endure no longer, then during such Curates residence, without absence above 40 days in any year. 13 *El. C.* 20. *Wingates abr. Stat.p.*292.

If Tenant in Tail, Bishops, Deans and Chapters, observe not the Rules before mentioned in making of their leases,

yet

yet notwithstanding the leases are good against the parties themselves. *Co. on Litt. f.45. a. Brownlow 1 part f.21.*

And if a lease be made by a Bishop for 21 years, according to the Rules aforesaid, which is spent within three years, now if the Bishop make a new lease to any other for 21 years to commence from the making, which is confirmed by the Dean and Chapter, this is a good lease, and the second lessee may enter when the first is out, and hold for the remainder of the Term of 21 years then to come. *Co. on Litt. fo. 45. a. Pasc. 28 Eliz. in B. R. Countess of Sussex Case; Leonards rep. 1 part 131. Parsons Law. p. 27, 28. Herns Law of Convey. p. 69, 70.* Demise, Grant, take, to Farm, let, and whatsoever words amount to a Grant, may serve to make a lease. *Co. on Litt. f.45. b. Bro. Leases 60, 67. H. 8.*

Generally now every lessee for life, years, or at will, although it be of never so small a Cottage or house, is called a Farmor or Fermer, and the premisses he possesseth are called a Farm or Ferm, Terms of the Law *verb. Farm.*

But formerly the chief messuage in a Village or Town, whereunto belonged great demeasns of all sorts, which were

used to be let for Term of life, years, or at will, was called a farm or term. *Terme de ley ubi supra.*

They are called farms or ferms of the *Saxon* word *Feormian*, which signifies to feed or yield victuals, for in ancient times their reservations were for the most part in victuals; until at the last and that chiefly in the time of *R. H.* 1. by agreement the reservations of victuals was turned into money, and so hitherto hath continued amongst most men. *Ter. de Ley ead. Lees Pl. Com. 169.*

Under the name of Lands are comprehended not only Gardens, Meadows, Pastures, Rivers, Woods, Moors, Waters, Marishes, Furzes, and Heath; but also Messuages, Houses, Tofts, Mills, Castles, and such like, *Vide Co. on Litt. L. 1 C. 2. Sec. 14.*

If the lessor seal the Indenture and not the lessee yet it is as good against the lessor as if both had sealed. *Vide Noys Maximes pa. 57. 14 Eliz. Finch L. 2. C. 2. pa. 109.*

And if at any time there happen any variance between the Indentures, it shall be taken as the Deed of the Lessor is, and the other shall be intended only the misprision of the writer, for the lessors is the principal Deed and the other but only a Coun-

Counterpart. *Noyes Maximes pa.* 57. 14. *Eliz. Fineh L.2 C.2. pa.* 109.

Now we have ſpoken briefly ſomething concerning Leaſes, and who may make them and for what Term; it follows next that we ſhall ſpeak ſomething of the ſeveral ſorts of Tenants mentioned in this Treatiſe, and ſo we ſhall conclude this Chapter.

Tenant in fee ſimple, is he which hath Lands or Tenements, to hold to him and his heirs for ever: and it is called in Latin *Feodum Simplex*, for *Feodum* is called Inheritance, and *Simplex* is as much as to ſay, lawful or pure, and ſo *Feodum Simplex* is as much as lawful or pure Inheritance, *Lit. Tenures L.1.c.1.ſ.1.*

Fee is derived *ex Feif, id eſt prædium beneficiarium*, that is a beneficial or profitable ferm or poſſeſſion; fee is divided into three parts, *viz.* ſimple or abſolute, conditional, qualified or baſe, but it is not my purpoſe to ſpeak of them. *Vide Brall.* 203. and 207. *Pl. Com. Dyer* 252, 253.

Tenant in Tayl ſpecial, is where Lands and Tenements be given unto a man and his wife, and the heirs of their two bodies begotten, in ſuch caſe none may inherit by force

force of such Guift, but those that be ingendred between them two, and it is called especial Tayl for that if the wife die and he take another wife and hath issue, the issue of the second wife, shall never inherit by force of the Guift: neither the issue of the second husband, if the first husband die. *Litt. Tenures. L. 1. C. 2. fo. 5. 4.*

Tenant in general Tayl, is when Lands or Tenements be given to a man and to his Heirs of his body begotten: In this case it is called general Tayl, for that, that whatsoever woman the Tenant taketh to wife, or if he have many wives, and by each of them hath issue, yet each one of these issues by possibilitie may inherit the Tenements by force of the said Guift, because that every issue is of his body begotten. *Litt. ubi supra.*

It is called in Latin, *Feodum Talliatum, i.e. hereditas in quandam certitudinem limitata*: for if Tenant in general, or special Tayl die without issue, the Donor or his Heirs shall enter as in their reversion: for in every Guift in the Tayl without more saying, the reversion of the fee simple is in the Donor. *Litt. Ten. L. 1. C. 2. fo. 3.*

Tenant

Tenant in tayl after possibility of Issue extinct, is when lands or tenements be given unto a Man and his Wife in special tayl, and one of them dies without Issue, now the surviving Donee is Tenant in tayl *apres possibilitie d'issue extinct*. And if they have Issue during the life of the Issue, the Survivor shall not be said Tenant in the Tayl after possibility of Issue extinct: but if the Issue dye without Issue, so that there be none alive that may inherit by force of the Tayl, then he that surviveth of the Donees is Tenant in Tayl after possibility of Issue extinct, *Litt. Ten. l. 1. c. 3. s. 7.*

This Tenant hath certain priviledges in respect of the privity of his Estate, and of the Inheritance that was once in him, which Tenant in tayl himself hath, and which Lessee for life hath not. As 1. he is disputishable for waste; 2. He shall not be compelled to Attorn; 3. He shall not have aide of him in the reversion; 4. Upon his alienation no writ of entry in *Consimili casu* lyeth; 5. After his death no writ of Intrusion doth lye; 6. He may joyn the Mise in a writ of Right in a special manner; 7. In a *Precipe* brought by him he shall not name himself Tenant for life; 8. In a *Precipe* brought against him

he shall not be named barely Tenant for life. *Cook on Lit. f.* 27. *b. Temp. E. 2. Pitz. Waste* 125. *2 H.* 4. 17. 7 *H.* 4. *f.* 10. & 11 *H.* 4. *f.* 14. 46 *E.* 3. 25. 39 *E.* 3. & 12 *E.* 4. *f.* 3. *Kitchin f.* 228. *a. b.*

And yet he hath four other qualities agreeable to a bare Lessee for life, and not to an Estate in tayl: 1. If he make a Feoffment in Fee, this is a forfeiture of his Estate; 2. If an Estate in Fee, or Fee tayl in Reversion or Remainder, descend or come to this Tenant, his Estate is drowned and the Fee or Fee tayl executed; 3. He in Reversion or Remainder shall be received upon his default; 4. An Exchange between a bare Tenant for life and him is good; for their Estates in respect of their quantity are equal, so as the difference stands only in the quality: *Vide* 39 *E.* 3. *tit.* 17. 45 *E.* 3. 25. 10 *H.* 6. *f.* 1. 11 *H.* 4. *f.* 14. 39 *E.* 3. *f.* 20. *Kitchin f.* 228. *a. b.*

Tenant by the Curtesie of *England* is where a man taketh a wife seized in Fee simple, or in Fee tayl general, or as Heir in tayl special, and hath issue by the same Wife Male or Female born alive, the Wife deceasing, the Husband shall hold the Land for his life, whether the Issue be dead or alive, and this is by the Curtesie of *England*,

Land, for it is used in no other Country, *Lit. l. 1. c. 4. f. 8.*

Four things do belong to an Estate of Tenancy by the Curtesie, *viz.* Marriage, Seisin of the Wife, Issue, and Death of the Wife.

By the Custome of Gavel kind, a man may be Tenant by the Curtesie, without having any Issue, *9 E. 3. 38.*

In divers Cases a man shall by having of Issue, be Tenant by the Curtesie, where a woman shall not be endowed, but it is not our purpose to search into these things, *Vide 7 E. 3. 6. 17 E. 3. 51.*

Tenant in Dower is where a man is seised of certain Lands or Tenements in Fee Simple, or in general tayl, or as Heir in special tayl, and taketh a Wife and deceaseth, the Wife after his death shall be endowed of the third part of such Lands or Tenements that were her Husbands any time during the Coverture, to have and to hold the same to her in severalty, by meets and bounds for Term of her life, whether she have Issue by her Husband or not; *Lit. l. 1. c. 5.*

By the Custome of some Countries she shall have half, as in *Kent*, so long as she keeps her self sole, and without Child, and the

the Custom of some Town or Burrough is, she shall have the whole.

But the Wife must be nine years of age, at the death of her Husband, or else she gets no Dower, and though the Husband be but four years old it matters not; and albeit *Consensus non Concubitus facit Matrimonium*; and that a woman cannot consent before twelve, nor a man before fourteen; yet this inchoate or imperfect Marriage, (from the which either of the parties may at the Age of Consent disagree) after the death of the Husband shall give Dower. *Co. on Lit. f. 33. a.*

There needeth neither Livery of Seisin, nor Writing, to an Assignment of Dower because it is by of Common right, it must be of some part of the Land, or of a Rent issuing out of the same. *Co. on Lit. f. 35. Dyer 91.*

To the Consummation of this Dower three things are necessary, *viz.* Marriage, Seisin, and the Death of her Husband, *Co. on Lit. f. 31. a.*

There are five manner of Dowers, *viz.* Dower by the Common Law, by Custome, at the Church-Door, by the Fathers Assent, and *Dower de la plus beale*; of all which you may read excellent mat-

ter

ter in my Lord *Cook* on *Littleton* on the Chapter of Dower, *vide Litt. Ten. l. 1. c. 6. f. 11.*

Tenant for Life, is he who hath Lands or Tenements for his own or another mans life; and this Tenant hath a Free-hold, but none other of lesser Estate hath a Free-hold, *Lit. Ten. l. 1. c. 6. Nov's Max. p. 20.*

If a man be Tenant for Term of his own life, he hath an higher Estate, than he that is Tenant *pur auter vie, Co. on Lit. f. 42. a.*

Tenant for Term of years is, where a man letteth Lands or Tenements to another for a certain term of years, as it is agreed between them; here when the Lessee entereth, he is then Tenant for term of years: And if the Lessor reserve to him a Rent, he may either distrain on the premises, or have an Action of Debt for the Rent Arrear, *Lit. Ten. l. 1. c. 7. Co. on Lit. f. 43. b. 44. a.*

There needs no Livery and Seisin to be given upon a Lease for years, but the Lessee may enter when he will: but upon a Lease for life there must be Livery and Seisin, or else no Freehold passeth, *Co. on Lit. f. 48. a.*

Tenant at Will is, where Lands or Tenements

nements are let by one man to another, to have and to hold to him at the will of the Lessor: now when the lessee enters, he is Tenant at Will, and the Lessor may put him out when he pleases, *Co. on Lit. f.* 55. *a. Fleta l.* 3. *c.* 15.

But if a man let Lands to another by Lease, to hold the same during the will of the Lessee, in this case the Law intends it to be at the will of the Lessor also, and he may put him out when he pleases. The same Law is if it be at the Lessors, it is intended at the Lessees Will also, for the Lessor cannot force him to stay longer than he pleases, *Co. on Lit. f.* 55. *a.*

Tenant at Sufferance is he who comes in by lawful lease, and keepeth possession after his Lease is out, and wrongfully holdeth over, as Tenant for life of *J. S.* who holdeth over after the death of the said *J. S. Finch l.* 2. *c.* 3. *Co. on Lit. f.* 57. *b.* 21 *H.* 6. *f.* 42. *Bract. l.* 4. *f.* 318. 4 *E.* 3. 35. 24 *E.* 3, 24. *F. N. B.* 201. *D. Pl. Com.* 138 *M.* 22 *E.* 4. *f.* 38. *Kitchin f.* 238. *a.*

The Lessor cannot have an Action of Trespass against such a Tenant before his entry into premises. *Co. on Lit. f.* 57. *b.*

Tenant by Copy of Court Roll is, where a man hath Lands or Tenements to him

him and his Heirs in Fee Simple, or in Fee tail, or for term of life, &c. at the will of the Lord after the Custom of the Manor, and these Tenants have no other Evidence to shew for their Lands but the Copies of the Court Rolls, *Lit. Ten. lib. 3. f. 9.*

This Tenant cannot alien his Land by Deed, for if he do, then the Lord may enter for the forfeiture, *Lit. ib.* 11 *H* 4, *f.* 18, *Kitchin f.* 116. *a. Co. on Lit. f.* 59. *a.*

But it behoveth him that will alien his Lands to another, to surrender them in some Court into the Lords hands, to the use of him that shall have the Estate, *Lit. & Co. ubi supra.*

This Tenant is as well inheritable as he that hath Frank Tenement by the Common Law, if he observe the Custome of the Mannour, and perform and pay his Services, *vide Co.* 4. *rep. f.* 21, 22, 23, *&c. Brian H.* 2 E. 4. *f.* 80. *& M.* 7 E. 4. *f.* 19 *per Danby.*

Tenants by the Verge, are after the same nature as Tenants by Copy of Court Roll, but the cause why they are called so, is for that when they will surrender their Tenements unto the Lords hands, to the use of another, they have a little yard

or

or Rod which by the Custome of the Manour they deliver unto the Steward or Bailiff, and he which takes the Land receives the Rod in Court from the Steward in the name of Seisin, and this is the reason why they be called Tenants by the Verge, but they have no other Evidence but Copy of Court Roll, *Lit. Tenures* l. 1. c. 10.

There are several other Tenants besides these we have named, as Tenant by Statute Merchant, Tenant by Statute Staple, Tenant by Elegit, Tenant in Mortgage, Guardian in Chivalry, Guardian in Socage, &c. but here are but few cases concerning them in this Treatise, therefore we do but only name them.

CHAP.

CHAP. II.

Several Cases concerning the various Covenants, Conditions, Grants, and Provisoes in Leases, and also of the Reservations, Exceptions, Surrenders, and Assignments thereof.

COvenant is an Agrement made between two persons, where each of them is bound to the other, to perform certain Covenants for his part; now there is a Covenant in Law, which is covert or implyed, and a Covenant in Deed, and this is manifest and expressed.

As for Example, a man lets his lands to another by Indenture for ten years, yielding and paying to him his heirs, &c. five pounds by the year; now here is a Covenant implyed in Law, that the Lessee shall pay the Rent, and if he fail, an Action lies against him.

A Covenant in Deed, is when such a Lease is made, and the Lessee by express words to the same Lease doth Covenant for him, his Executors, &c. to pay the Rent to the Lessor, &c. If

If the lessor Covenant to make a new Lease upon surrender of the old Lease, and afterwards he makes a Lease by Fine for more years to a stranger, here the Covenant is broken, though the Lessee did not surrender, the which by the words ought to be the first Act; for that the Lessor did disable himself either to take the Surrender or make a new lease. 38 El. *Sir Anthony Mayne, and Sears case.* Co. 5 *Rep. f.* 20 *Abr. Mores Rep. p.* 129. *pl.* 293. *Ney's Maxims p.* 13.

If a man Covenant and grant to *R. A.* that he shall have ten Acres of Land in C. for 21 years, paying twenty eight pounds this is a good Lease, for the word Covenant is of such force as Demise. 37 H. 8. *Bro. Leases* 60. *Hutchins p.* 235. *b. Harrison and Wyat case Abr. Mores Rep. p.* 432. *and pl.* 608.

If a man make a Lease for years, and the Lessee covenanteth to pay to the Lessor, his Heirs and Assigns yearly during, &c. ten pounds; here if the Lessor die, the Executors shall have the Rent Arrear, *Ney's Maxims p.* 17. *and* 50. *Dr. and Stud. l.* 2. *c.* 24.

If the Lessee covenant for him and his Assigns to build a Brick wall or an house upon

upon the Lessors Land, or to pay a Collateral sum of money to the Lessor, and after the Lessee assigneth over his term: in this Case the Assignee shall not be bound by this Covenant, because the things were only Collateral, and were not *in esse*, nor parcel of the Demise, at the time of the Lease made, *Pasch.* 25 *Eliz. in* B. R. *Co.* 5. *Rep. f.* 16, 17. *Spencers case*, *M.* 29 *Eliz. in* B. R. *Barker and Fleetwels case*, *Godbolts Rep. f.* 69, 70. *Vide Mayo and Buckhurst's case*, *M.* 15 *Jac. in* B. R. *Cro.* 2 *part f.* 438, *and* 439 *and Herns Law of Convey. p.* 107, 108. *and* 109.

If there be a Covenant in a Lease, that if the Rent be behind for such a time, then the Lease to be void; here no Acceptance of the Rent after such failure will make the Lease good again, 38 *Eliz. Co.* 3. *Part f.* 64. *Remants case*, *vide Cowels Inst. p.* 193. *Dyer f.* 51.

If a man let a house and lands for years, and the Lessee covenanteth to uphold the houses, and to leave the houses and lands in as good plight and estate as he found them; in this case if the houses be blown down by tempest, or fired by accident, or otherwise destroyed, if the Lessee do not repair and build them again, and leave them

them as good as he found them, the Lessor may bring an Action of Covenant against him at the end of his Term: but if he maketh waste in the cutting of Timber, the Lessor may have an Action of Covenant before the end of the Term for that. *Trin. 1649 Rot. 348 in B.R. Compton and Allen Case Styles Rep. 162. F. N. B. f. 145. Noys Max. p. 16. 40 E. 3, 5. Finch p. 64. 38 Eliz. 5 par. f. 20.*

And if the Lessee for years covenant and grant for him and his Executors with the Lessor, to repair the houses as often as need requires, and after the Lessee assigns over his Term, and the Assignee suffers the houses to decay; in this case an Action of Covenant lies against the Assignee although he be not named in it, because it is a Covenant inherent to the Land, *M. 44 Eliz. in B. R. Dean and Chapter of Windsor's case, Co. 5 par. f. 24. Mores Rep. the same case, fo.*

If *A.* lease a house to *B.* for years, and *B.* covenants to repair the house, and that it shall for *A.* his Heirs and Assigns be lawful to enter into the house, and see in what plight for matter of Reparations it stands, and if upon such view any default be found in not repairing, and thereof warning

warning be given to *B.* his Executors, &c. then within four months after such warning it shall be amended, the house becomes ruinous for want of Reparations, *A.* grants the reversion over in fee to *C.* who upon view gives warning to *B.* of the default; in this case if it be not repaired within 4 months, *C* as Assignee to *A* may bring his Action of Covenant, notwithstanding that the house, became ruinous before his Interest in the Reversion; for the Action is not conceived upon the ruinous estate of the house, but for the not repairing it within the time appointed, so as it is not material within what time the house became ruinous. *M.* 30 *El. in C. B. Mascels case, Leonards Rep. 62. Abr. of Mores Rep. pag. 77. pl.* 363. the same. It is said that a Copy-holder is such an Assignee, as may have Debt or Covenant by the Statute of 32 *H.* 8. *Vide Plat and Plummers case, M.* 20. *Jac. in B. R. Cro. 2. par.* 17.

Two lessors make a lease to two lessees, and the lessors covenant to discharge the lessees of all incumbrances done by them or any other person, here though the words are joynt, yet if either of the lessors break covenant, the lessees may bring their Action, for the Covenant goes as

well to several Incumbrances, as to joynt ones, for it is of all Incumbrances by them or any other person. *M. 2. Car. B. R. Sanders and Merions case, Popham's Rep. f.* 100. *Latche's Rep. f.* 161 *the same case.*

If a man make a lease for life or years to another, and covenant for him and his heirs, that he will save the Lessee harmless from any claiming from by or under him, and the Lessor dies; and his widow brings a Writ of Dower against the lessee and recovers; in this case the Covenant is broken, and the lessors heir liable to the Action; but if he had been the mother of the lessor that had recovered Dower, then the Action would not not have lain against the heir, because she did not claim from by or under the lessor. *Tr. 21 Jac. in B. R. Godbolt rep.* 333.

Tenant for life makes a lease for years rendring rent, and dies within the term, and he in remainder enters; the lessee brings an Action of Covenant against the Executors of Tenant for life, and adjudged the Action would not lie, because it is but a Covenant in Law, which determines with the estate and interest of Tenant for life, without it had been broken in the life of the Testator; but if it had been an expres

press Covenant in Deed, it is then otherwise. And if a man seised in Fee simple make such a lease for years, an Action lies against the Heir, upon a Covenant in Law by reason of the privity. *Hil. 9. Eliz. Dyer 257. Vide Swan and Searles case, M. 11 Eliz. Abr. Mores rep. pa. 34. pl. 105. and Bragg and Wiseman's case, 12 Jac. rot. 538. Brownlow 1 part fo. 22.*

Note also an Action of Covenant lies against an Executor of lessee for years, upon a Covenant in Law though not named, for arrearages of Rent, upon the general words in the lease *Yielding and paying*, there being no express Covenant in the lease for the payment of the same. *M. 1653. in B.R. Styles rep. 387. Newton and Osbourns case.*

The Lessor covenants that the Lessee shall enjoy the Land without disturbance, let, or hindrance, &c. and afterwards the Lessor sues the Lessee in Chancery, suggesting that the Lease was made in trust to try a Title only: and this was judged to be no breach of Covenant, because it was a Suit in Equity, and not at Common Law. *Selby and Chutes case, Abr. Mores rep. pag. 254. pl. 1113.*

If the Lessor covenant with the Lessee

that he shall have sufficient hedgeboot by the assignment of his Bailiff, or him, and not otherwise: here he may not take it without Assignment, *quia modus & conventio vincunt Legem, Co. on Litt. f.* 41, b. *Tr.* 28 *H.*8. *Dyer f.* 19.

If a man take a lease by Indenture of a ruinous house, or that wanteth reparations and do covenant in the lease to leave the house at the end of the term in good repair; now whatsoever happen he is bound by the rule aforesaid to leave it in good repair; but if he do not covenant to do it, the Law in such case binds him not to repair it, *Perkins tit. conditions* 738. *M.* 1649. *in B. R. Styles Reg. pract. p.* 475.

But if a lease for years be made of a Wood by Deed Indented, and it is covenanted that the lessee shall leave the lessors wood in as good plight as it was at the time of the lease made: and during the term the wood is destroyed by a sudden tempest: in this case no Action lies against the lessee for breach of Covenant, for it is not possible for him to perform the same, and *Lex non cogit de impossibilia, P.* 14 *H.*8. 32. *Perkins* 738. 4 *E.*3 6. *Philipr Prin. of Law p.*2. *Fitz. Covenant* 29. *Plow.*

If lessee for years covenant for him and his

his Assigns, to repair a house from time to time, and to leave it at the end of the term sufficiently repaired: In this case, though he assigns over his term to another, who pays rent, and the lessor accept it, and afterwards the house becomes ruinous for want of reparation, yet notwithstanding the acceptance of the rent of the Assignee, the Lessor may have his Action of Covenant against the Lessee or Assignee at his election; but after such acceptance of the Assignee for Tenant, he cannot have an Action of Debt against the Lessee, if the rent become arrear, but is left to take his remedy against the Assignee only. *Fisher and Ameers case, H. 8. Jac. rot. 2061. Brownlow 1. par. f. 20. H. 15 Car. in B. R. Norton and Acklands case, Cro. 1. par. f. 418. and H. 16 Jac. in B. R. Sir Jo. Brett and Cumberlands case, Godbolts Rep. f. 277.*

If a lease be made for years rendring rent, and the Lessee is bound to perform all covenants and agreements, if he do not pay the rent, the Obligation is forfeited; for the payment of the rent is an Agreement. *26 H. 6.* See *Goldsborough rep. pag. 16. in the end, and Baker and Spaines case, H. 11. Jac. in C. B. rot. 3139. Hobart's Rep. f. 81.*

If a leafe for years be made with Warranty, this ſounds not in the nature of a Warranty, but of a Covenant, becauſe it is but a Chattel; and if the Leſſee be queſted, yet he may have an Action of Covenant. 26 H. 8. 3. *Finch l. 2. c. 3. p. 115. Pincombe and Rudges caſe. H. 5. Jac. rot. 941. in Br. Hobarts Rep. f. 3. & 4.*

Covenant upon an Indenture dated 20 *April* 4 *Eliz.* The Defendant pleaded in Bar a Releaſe made 3 *Eliz.* of all Actions, Suits, Debts, Executions, and demands which ever before he had or may have *ab origine mundi*, to the day of the date of the Releaſe; and adjudged it was no Bar, becauſe it was made before the Covenant was broken. *Hall and Rerbies caſe, Abr. Mores Rep. p. 18 pl. 107.*

Leſſee for years covenants for him and his Aſſigns that he will not lop nor top the Trees during the term, he dies Inteſtate, his Adminiſtrator lops the trees: in this caſe he is chargeable to the Covenant, becauſe he hath the term to the uſe of the Teſtator. *M. 5 Eliz. Abr. Mores Rep. p. 22. pl. 231.*

If I bring an Action of Covenant againſt T. and declares upon a leaſe for years made by the ſaid T. by the word *Demiſe*, which

which imports a Covenant, and shews that at the time of the leaſe made the leſſor was not ſeiſed of the land, but a ſtranger, and ſo the Covenant in Law broken. And the whole Court was of opinion that Action did lie, for the breach of Covenant was in that the leſſor had taken him to demiſe that which he could not; for the word *Dimiſi* imports a power of letting, as *Dedi* a power of giving. And it is not reaſonable to enforce the leſſee to enter upon the land, and ſo to commit a Treſpaſs: but if it were an expreſs Covenant for quiet enjoying, there perhaps it were otherwiſe. *P.* 11. *Jac.* 1358. *Holder and Taylers caſe. Hobarts Reps* 112.

Covenant was brought upon the words Covenant, promiſe, and agree, that the leſſee ſhould quietly occupy and enjoy the lands demiſed for ſeven years, and the Plaintiff ſhewed that a ſtranger entered upon the land, but did not ſhew that he entered by title, and for that cauſe it was adjudged againſt him; and the difference was taken between a Covenant implied, as here it is in the words Demiſe, promiſe, and agree: but upon a Covenant expreſſed, there the leſſor is to guard the land againſt every perſon. *Tiſdale and Sir Wil-*

liam Essex case. Abridgm. of Mores rep. p. 256. pl. 1117. Hobarts rep. f. 34. the same case.

Lessee for years of a Mannor, covenanted that he nor his Assigns would molest, vex, or put out any Tenant from his Tenancy upon pain of forfeiture. A breach was assigned that the Lessee entered upon a Tenance of the Mannor, and beat and wounded the Tenant for his Tenement: and it was adjudged no breach without an Ouster, or disturbing him of the profits of it. *Abr. Mores rep. 112. pl. 510. Pen & Glovers case.*

A covenants to make a Lease to *B* and his Assigns for 21 years, the sense of these words shall be taken that he shall make the lease to *B* or his Assigns for 21 years. *Vide Plow. Comm. 289.*

Note that as there is a Covenant in Law and in Fact, so there is a Covenant meerly Personal, and Covenant Real.

A Covenant meerly personal is where a man covenants with another by Deed to build an house, or to serve him, &c.

A Covenant real is where a man tieth himself to pass a thing real, as Lands or Tenements, or where he covenants to levy a Fine of lands.

A

A made a lease to *B* for forty years by Deed, and in the Deed covenanted and granted to the Lessee that he might take convenient houseboot, fireboot, &c. in his whole wood called *S*, within the Parish of *S*, which wood was other lands, and not parcel of the land leased. Resolved the Grant was good, and the Lessee should have it during the term, and his Executors shall take the same as his Assigns, and the Grant shall not restrain him, but that he shall have houseboot, fireboot, &c. in the lands also leased unto him. *Moreg rep. f. pl.* 23.

A Tenant covenants to do all reasonable services for his Land-Lord with his Carts, Carriages, and otherwise as he shall be required, and being sued for breach of Covenant, in that he was requested to bring three loads of Coals, and refused so to do; he pleaded that at that time he had neither Cart nor Carriage, and it was held that he was thereby excused, for the Tenant in this case is not bound to keep a Cart or Carriage to serve his Lessor, but if at such time he had had a Cart when he was requested, then he ought not to have denied. *M. 2 Car. 1. Rot.* 130. *Manners and Vefses case, Latches Rep. f.* 202.

But if a Lessee covenant with his Lessor, to bring him every year three Cart-loads of Coals; In this case he is bound either to keep a Cart for that purpose, or otherwise to procure one to bring them, else he is liable to an Action for breach of Covenant.

Words of Condition are, *sub conditione, ita quod, si contingat, proviso semper*, and (*ita tamen*) so is a condition by *Perkins Pl. Com. f.* 107. But the words *ad effectum, ea intentione, ad sciendum*, or the like, do not make a Condition in Feoffments and Grants, if it be not in case of the King, or in the case of a Will. *Viscount Co.* 10. *Rep.* 42. *in Mary Portington's case, and Hornes Law of Con.* 244. *Dyer* 138. *Dr. and Stud.* 122. *a.*

All Conditions are either actual and expressed, which be called by our Lawyers *Conditions in fact*; or else they be Conditions implied and covert, and not expressed and these are called *Conditions in law*.

Also all Conditions are either precedent and going before the Estate, and are executed; or else they are subsequent, and following after the Estate and executory: the Condition precedent doth gain and get the thing or estate made upon condition by the performance of the same; the Condition

or subsequent doth keep and continue the thing or estate made upon condition by the performance thereof.

Actual and expressed condition, which is called Condition in Deed, is a condition knit and annexed by expresse words to the lease or grant, either in writing, or without writing: as for example, If I make a lease to a man for years, reserving rent to be paid at such a Feast, upon condition that if he fail of payment at the day, that then it shall be lawful for me to re-enter.

Condition implied, or Covert and not expressed, which is called a Condition in Law, is when a man grants to one the Office to be Keeper of a Park, Steward, Bailiff, or such like for term of life; here though the Condition be expressed in the Grant, yet the Law implieth a Condition, that if he do not faithfully and truly execute his Office, then it shall be lawful for the Grantee to discharge him thereof. *M.* 33 *E.* 1. *coram Rege in Thesaur. Levesque de Durhams case, Litt.* 18. *b.*

Condition precedent and going before, is when an Estate is made to a man for life, upon condition that if the Lessee for life will pay to the Lessor 20 pounds at such a day, that then he shall have Fee simple, here-

here the Condition precedes and goes before the Estate in Fee-simple, and upon the performance of the condition doth gain and get the Fee-simple, if Livery and Seisin were given.

Condition subsequent and following after, is when one grants to *I. S.* his Mannour of *Dale* in Fee-simple, upon condition that the Grantee shall pay to him at such a day 20 pounds, or else that his Estate shall cease; here the condition is subsequent and following the Estate in fee-simple, and upon the performance thereof doth keep and continue the Estate. *Terms del Ley verb. Condition.*

No man shall take advantage of a condition, except he be party or privy to it.

If lessee for 20 years make a Lease for 10 years upon condition, and the Lessee for 20 years surrenders to him in the Reversion, he in the Reversion shall not take advantage of the Condition, because he is in of another estate. And if a lease be made upon condition to be void if 10 pounds be not paid at a certain day; here the Grantee of the Reversion shall not enter for such a condition, because it is Collateral. *Vide Chamorth and Philips case, Mores rep: f.*

A man gives land to his wife during the minority of his son, upon condition that she shall do no Waste, she takes a Husband who commits Waste: this is no breach of the condition, for a condition to avoid an estate shall be taken strictly. *Cobs case in Latches rep f.20. Dyer 45 and 6.*

If a lease be made to three upon condition that they nor any of them should alien without licence, if the lessor give leave to one of them to alien: now the other two may alien without licence, for the condition being determined to one is determined to all. *M. 28 Eliz. in C.B. Leeds and Cromptons case, Hughes Gr. Abr. 1. par. p.428. Vide Dumpors case 45 El. in B.R. Co. 4 rep. and 28 El. L. Staffords case, 4 and 5 P. and M. Dyer 152.*

If the Lessor do enter for condition broken, or the lessee do surrender, or the term end: yet the lessor may have an Action of Debt for the arrearages. *Noyes Maxims p.72.*

If a Lease be made upon condition that the lessee shall not alien to *A*, if the lessee alien to *B* and he alien to *A*, the condition is not broken, for a condition that goes to the breaking of an estate shall be taken strictly. *Dr. and Stud. l. 2. c. 35. M. 31 H. 8. Dyer f. 45. C. 8. rep f. 99 l.*

A...

A Leaſe was made for years, upon condition, that if there ſhould be default made of Reparations upon warning given within ſix months, the Leſſor to re-enter: Reſolved the warning in this caſe muſt be given to the Perſon, and not at the Place, and both to the perſon of the Leſſee, as alſo to the perſon of the Aſſignee. *Abr. Moors Rep. p.192 pl. 883. Swelman's and Cutts's caſe.*

If a man be bound in an Obligation to repair the houſes of the Obligee as often as need ſhall require during ſuch a time, and after the houſes need reparations: in this caſe though the Obligor knoweth not that they need reparations, yet he is bound to take notice at his peril, for ignorance here excuſeth not. *Dr. and Stud. l. 2. c. 47.*

But if the Condition had been to repair ſuch houſes as the Obligee ſhould aſſign, and after he aſſigneth, &c. but the Obligor hath no notice of it: here the ignorance ſhall excuſe him, for the Obligee ought to give him notice. But if the Aſſignment had bin appointed to a ſtranger, there the Obligor muſt have taken notice at his peril. *Dr. and Stud. l. 2. c. 47. Vide Bromlows 1. par. f. 135.*

If

If a man seised of lands in fee lease the same to a stranger by Indenture for five years, upon condition that if the Lessee pay to the Lessor five pounds within the two first years, that then he shall have fee in the same land; in this case if he pay the money, he hath a good estate in fee, if livery and seisin were made according to the Deed. *Lit. l. 3. c. 5. f. 74. b. Vide Seignior Straffords case, Co. 8. Rep. f. 73. and Nichols case, Pl. Com. 487. Co. on Litt. f 216. a. b. 217. a. b. Kitchin. f. 219. a. and Herners Law Com. p. 48.*

But if a man seized of land in fee lease the same to a stranger for years upon condition that if the Lessee be ousted within the term by his Lessor, that then he shall have fee: here if the Lessee be ousted by a stranger without the Lessors assent, he shall not have fee. *Vide 9. H. 6. 29. and Perkins 708.*

Several persons make several Covenants in one Indenture or Writing, the Seal of one of them is broken away that shall not avoid the Covenant of the rest, but onely the Covenant of him whose Seal is so debruised or defaced, because several Covenants; but it is otherwise of joynt Covenants. *Matthewsons case, Co. 5. Rep. f. 23.*

Joint

It was adjudged 4 *Eliz. in C. B.* that by a releafe of all Actions, Suits, and Quarrels a Covenant before breach of it is not releafed thereby, but by a releafe of Covenants the Covenantee is difcharged before the breach. *Vide Co. 5. Rep. f. 70 2 Rep. f. 112, and 10. Rep. 52.*

If a man feifed of lands in fee leafeth the fame to a ftranger by Indenture, yielding five pounds by the year, and the Indenture is, that if the Leffee will hold over ten years to him and his heirs, that he fhall then pay twenty pounds by the year, and Livery and Seifin is made to the leffee accordingly: in this cafe for the rent behind within the ten years the Leffor fhall have an Action of debt, which proveth the Freehold and the Fee are not in the Leffee before the ten years ended: but if when the ten years be paft and ended, the leffee doth ftill continue the poffeffion of the fame land, and doth occupy it by force of the Indenture, then he hath fee, and fhall pay the twenty pounds as a Rent Seck: but if a man feifed of land doth leafe the fame land for life, yielding to him a Rofe for the firft fix years, and if he will hold the land over the fix years, that then he fhall pay three Marks by the year: in this cafe the

the Leſſee hath the Freehold preſently, *Perkins* 710 & 711. *M.* 40 *E.* 3, 27. *Co. on Litt. f.* 218. *b.*

If a leaſe for life or years be made upon condition, that if the Leſſee kill *J. S.* within the term, that then he ſhall have and hold the land leaſed unto himſelf and his heirs for ever: now if he kill *J. S.* within the term, yet his eſtate is not enlarged thereby, becauſe the Condition is againſt Law, and the eſtate doth begin to be enlarged by the performance of the Condition, yet the leaſe is good, becauſe the ſame doth not begin by the Condition. *Perkins* 723 & 725. *Herns Law Con. p.* 115. 4. *H.* 7. 4. 8 *E.* 4. 13. *P.* 2 *E.* 4. 3 & *Vide Brownings caſe. Pl. Com. f.* 133.

If a leaſe be made on Condition that if a ſtranger diſlike it, or be diſcontented with it, that then the leaſe ſhall be void: this is a good Condition. 1 *H.* 8. 13. *Sheppards Touchſtone of Aſſurances, p.* 129.

Alſo if a man make a leaſe for life, and adde this condition, that if the leſſee within one year do not pay twenty ſhillings, that then he ſhall have but a term of two years, and he fails in payment of the twenty ſhillings, by this his leaſe for life is gone; and he hath now but a leaſe for two years,

years, *Sheppard ibid. Co. on Litt.* 218. 50 E. 3. 27.

If a lease be made upon condition that if the lessor do alien the Reversion within the term, then the lessee shall have fee, and the lessor doth alien the Reversion in fee by Fine to a stranger: here in this case the lessee shall not have fee, for the Freehold and the fee are lawfully in the Conusee before the lessee can take it by condition; but if the lessor had granted by Deed onely to a stranger, then the lessee should have had the fee by the condition: and the reason is, because the Reversion is not in the Grantee before attornment. 6. R. 2. *Cond.* 1. *Perkins sec.* 729.

If a man have a lease for years, and demise or grant the same upon condition, &c. and die; his Executors or Administrators shall enter for the condition broken, for they are privy in right, and represent the person of the dead. *Perkins* 833. *Terms del Ley verb. Privy Vide* 21 H. 7. 18. a. & *Co. on Litt.* f. 214. b.

All Grantees of Reversions may enter upon Fermers for any forfeiture or condition, and have like advantages against them (by Action only) for any other covenants, conditions, or agreements contained in the In-

Indentures of their leaſe, as the leſſor, their heirs or aſſigns might, and ſo may the Leſſees againſt the Grantees of the Reverſions (recovery in value only excepted) and this by the Stat. 32 *H.* 8. *c.* 34. but herein a difference is to be taken between Conditions and Covenants that are inherent and go with the thing let, and Covenants that are collateral to it; for the inherent Covenants which concern the thing granted, and tend to the ſupportation of it, are the ſame which the Grantees by this Statute ſhall take advantage of. *Fineh l.* 2. *c.* 2. *p.* 107. *Herns Law of Convey. pag.* 31. *Sheppards Touchſtone p.* 175, 176.

If a man make a leaſe for years upon condition that the rent ſhall be paid at *Michaelmas*, and in the mean time give a general releaſe to the Leſſee of all Actions, yet this doth not remit the rent, but the Leſſor may have an Action of Debt for it after the day: and the reaſon of this is, becauſe it was neither *debitum* nor *ſolvendum* at the time of the releaſe made; and it is a thing not merely in Action, becauſe it may be granted over, but by a releaſe of rent the rent is extinct and diſcharged, whether the day of payment be come or not. *Litt. Ten. pag.* 104. *b.* 105. *a. Co.* 1. *par.*

par. Inſt. f. 292. *b.* 45 *E.* 3. 8. 7. *H.* 7. 5. 17 *H.* 6. 26. *Cowels Int. p.* 193. *Noys Maximes p.* 77. *Sheppards Touchſtone of Aſſurances p.* 343.

By a releaſe of all demands without more words, are releaſed all rights and Titles to Land, warranties, Conditions annexed to Eſtates both before and after they be broken or performed; and alſo Statutes, Obligations, Contracts, Recognizances, Covenants, Rents, Commons, and the like; and all manner of Actions real and perſonal, Appeals, Debts, Annuities, Judgments, Executions, and all other duties whatſoever, except it be a mere poſſibility, or future duty, as a rent payable after my death, and ſuch like. *Co. on Litt. f.* 291. *Sheppards Touchſtone p.* 343. *Noyes Maxims p.* 77.

If one be poſſeſſed of a leaſe for years, or of an houſe, or any other chattel real or perſonal, and he give or ſell all his Intereſt therein, upon condition that the Donee or Vendee ſhall not alien the ſame: this Condition is void for repugnancy, and the Gift or Sale is abſolute. *Sheppards Touchſtone p.* 131.

If a man enter for breach of a Condition in Law, he ſhall avoid all charges and acts done

done after that thing is done which doth produce the forfeiture, but he ſhall not avoid any thing done before that time; for he muſt take the thing as he finds it. *Perkins ſect.* 843, 844. *Co. on Litt. f.* 233. 234. *Sheppards Touchſtone p.* 155.

If there be a condition to pay rent, and the leſſee let part of the land to other under-tenant, or let the land to another for part of the time, and he undertake the rent ſtill, and fail of payment; in this caſe the Condition is broken and Eſtate forfeited. But if there be any covine and practice in the caſe between the firſt leſſor and leſſee, the under-tenants may perhaps get relief in Equity. *Cromp. Jur.* 64, 65. *Sheppards Touchſtone p.* 147.

If a leſſee grant his Eſtate on condition to a ſtranger, that if he get the good will of the leſſor, and no time is ſet down when he ſhall get it; here he ſhall have time during the whole term to get it; and though he deny it at firſt, yet if he grant his good will afterwards it ſufficeth. *Perk. ſect.* 795. *Sheppards Touchſtone p.* 135.

If a leaſe be made of a houſe on condition that the leſſee ſhall not ſuffer any woman great with child to harbour or lodge in the houſe ſix days after notice given

given by the lessor, and the lessee do suffer any such person after notice given, albeit the lessor consent to it; yet the Condition is broken, But if the lessor do *nolens volens* keep such a person there against the mind of the lessee; this is no breach of the Condition. *Co. 8. Rep. f. 92. Sheppards Touchstone p.* 145.

If two take a lease jointly for years with Condition, that if the lessees die before the term ended, the lease shall be void; the lessees make division, and one of them alienateth his part, and dies; in this case the lessor cannot reassume the part of him that died, but the Alienee shall have it during the life of him that surviveth. *Vide 3 E 6. Dyer 67. Faringtons case, and Cowels In.* 199.

If a lease be made for years upon condition, that if the lessee demise the premisses, or any part thereof, other than for a year to any person or persons, then the lessor and his heirs may re-enter; and the lessor after devises it to his son by his will; this is a breach of the Condition. *Hil. 30 Eliz. B. R. rot.* 376. *Cole and Tauntons case, Goldsb. rep. pag.* 184. *pl.* 122. 31 *H.* 8. *Dyer* 45.

If a man of his mere motion enfeoff *H* by

by Indenture upon condition that he shall yearly pay to *J. S.* out of the lands a certain rent; and if he fail in payment, that it shall then be lawful to the said *J. S.* to enter, &c. the rent is behind and unpaid; in this case *J. S.* may not enter by Law, for there is a Maxim, that no man shall take advantage of a Condition unless he be party or privy to it. *Dr. & Stud. l. 2. c. 20 fo. 90. a. 13 H. 4. 17. Sheppards Touchstone, pag. 953.*

If the Condition of an Obligation be to pay money, or do any like transitory act to the Obligee on a day certain, but no place is set down where it shall be done, in this case it must be done to the person of the Obligee wheresoever he be; for this end therefore the Obligor must seek out the Obligee at his peril, if he be *intra quatuor maria*, or else the Obligation is forfeit: but if the Obligee be not within the Kingdom at the time when the thing is to be done, he is not bound to seek him, nether is the Obligation forfeit for not doing the thing; but when the thing the party is bound by the Condition to do is *local*, he is not bound to go any further, or to any other place, but the place appointed. *Perkins sec. 1. 780 and 781. p. 7 E. 4. 4.*

4. 4. *per Moyle. Sheppard Touchstone, pag.* 378.

If a Corody be granted for a service to be done, the Omission of the service doth determine the Corrody. *Davis Rep.* 1.

It was resolved by all (*absente Richardson*) if a man hath lands in fee and lands for years, and deviseth all his tenements and lands, the Fee simple lands only pass, and not the lease for years: and if he hath none but leases for years, and he devises all his lands and tenements, then they pass. *Vide Tr.* 7 *Car.* 1. *in B. R. Rot.* 497. *in Rose and Bartlets case. C.* 1. *part. f.* 213.

It was agreed that if a lessee for years make a lease at will, and the lessee at will make a lease for years, and afterwards he in Remainder grants over his land; this is good, notwithstanding that the Deed of Grant of the interest were not upon the land; because he is not out of possession but at his pleasure. *Sir Thomas Fishers case, Latches Rep. pag.* 75.

If the Grantee of a Rent charge release parcel of the Rent to the Grantor or his heirs, the remainder may be apportioned, and the land shall remain chargeable still for the residue; but if he release in one acre parcel of the land charged; then all the

the Rent is extinct and gone *Dr. and Stud. l. 2. c. 26. 21 H. 7. 2. M. 30 Eliz. in B. R. Hardings case, in Godbolts Rep. 139 Co. in Litt. fo. 147. b. 148. a. H. 21. Eliz. in C. B.*

The word Grant in a Chattel real doth import a warranty in it self, without any clause of warranty. *Hernes Law of Convey. pag. 49.*

Upon these words, Demise, Grant, in a leases for years or lives, the lessee and his Assigns shall have a Writ of Covenant, always provided there be no special Covenant following after in such leases, for then this general Covenant is qualified, and the former words Demise, Grant, shall lose their operation. *Vide Dyer, 257. 9. Eliz. and Nokes case, 41 Eliz. Ca. 4. Rep. l. f. 80.*

If the lessor Grant a Rent to a stranger, the Tenant cannot Attorn nor put the Grantee in possession by the delivery of an Ox or such like thing, because it is another thing; but upon a recovery of a Rent, the Sheriff may deliver possession by such a thing. *49 E. 3. 15. Finch l. 1. c. 3. pag. 36.*

If one that hath a lease for years grant his Term to a Feme covert, and to another,

or if a Feme sole and another be Joyntenants for years, and she take a Husband yet the Estate of the Feme and Joynture doth continue, so as the Survivor of the wife or of the other shall have the whole Estate. 24 Edw. 3. Com. 428. and Finch. L. 1. c. 39. pag. 42.

If a man grant an Estate to a woman *dum sola fuit*, or *durante viduitate*, or *quamdiu se bene gesserit*, or to a man and a woman during coverture, or as long as the Grantee dwells in such an house, or so long as he pays ten pounds, &c. or until the Grantee be promoted to a Benefice, or for any like uncertain time in all these cases if it be of Lands and Tenements, the lesse hath in Judgement of Law an Estate for life determinable, if Livery and Seisin be made. 17 H. 6. 27. 26 E. 3. 69. 14 H. 8. 23. Brook. l. 4. fo. 207. Fleta. l. 3. c. 12. Co. on Litt. fo. 42. a. Hernes Law of Convey. p. 143.

And if it be of Rents, Advowsons, or any other thing that lies in Grant, they have a like Estate for life by the delivery of the Deed. Coke Litt. fo. 42. a.

If a lessee for anothers life die living the other man, he that doth first enter upon the Estate after his death shall be Tenant

pur

cestuy que vie, that is Tenant for the other mans life, and shall be liable to the payment of the Rent reserved, and in law is called an Occupant, because his Title is by his first occupation. *N. B. fo. 83. Plow. 3 Eliz. Brac. 84. fo. 170. Co. on Litt. fo. 41 b.*

And so if Tenant for his own life grant over his Estate to another, if the Grantee die, living Tenant for life; in this case he that first enters shall be an Occupant: In like manner it is of an Estate created by Law; for if Tenant by the Curtesie or Tenant in Dower grant over his or her Estate, and the Grantee die during their lives, in this case also there shall be an Occupancy. *Ft. cont. fo. 28. b. In Cotham's case, 27 Ass. pag. 31. Co. on Litt. fol. 41. b.*

But there can be no Occupant against the King, for *nullum tempus occurrit Regi*. *Co. on Litt. fo. 41. b.*

It were good, saith my Lord *Coke*, to prevent the uncertainty of an Estate of the Occupant, by adding these words (to have and to hold to him and his Heirs during the life of *cestuy que vie*) and this shall prevent the Occupant. And if a man hath an Estate already for anothers life, with-

out the words Heirs in his lease, then it is good for him to Assign his Estate over to some friends and their heirs in trust during the life of cestui que vie. Co. on Litt. fo. 42. b. 239, 258. Pl. com. fo. 556. Vide Dyer Eliz. 253. 328. 11 H. 4. 42. 17 E. 3. 48. Sheppards Touchstone. pag. 108. and Kitchin fo. 216.

If a Lessee for 20 years of Lands and Tenements grant the same Lands for a parcel of the years to a Stranger, reserving to himself 20 s. in this case he may distrein for the Rent reserved, or have an Action of Debt at his election, because by common intendment he is to have the same Lands after the years determined, because he hath granted but parcel of the years, so that the remainder continues in him. Pl. Com. fol. 893.

But if Cestui que vie lease his land in use for Term of years, reserving Rent by word of mouth; in this case he cannot distrein for the Rent reserved, because no reversion remains, but it is said he may have an Action of Debt for it. Vide Pl. Com. fol. 893.

If I lease Lands to another for years, the Term to begin at the Feast of Easter next, and before the Feast the lessee grants his

Term

Term to a stranger; this is a good Grant, for he hath an Interest before entry, which may be granted over, *Coke Lit. f. 46. b. Perkins fol. 91.*

If Rent be granted to me, I may grant it away to a stranger before I be seised thereof, *Perkins fol. 91.*

Tenant at will cannot grant over his estate, for he hath no interest certain, *27 H. 6. f. 3. b. Kitchin p. 237.*

If a man grant to another Common of Pasture for ten Kine in lands in such a Town, though the Grant be general, yet the Grantee shall not have Common but for such Commonable, so as the Grant shall extend but to pasture grounds, *Perkins fol. 908.*

If a lease be made to *Baron* and *Feme* for term of their lives, the remainder to the Executors of the survivor of them, if the husband grant away the term and die, yet this shall not bar the wife, *Co. on Lit. f. 46. b. Hil. 17 Eliz. in B. R.*

Tenant for life, the Remainder in Fee, tenant for life makes a lease for years in *March*, and the lessee entereth, and then tenant for life granteth the premisses to another, to hold from the Feast of *St. John Baptist* next ensuing for life, after the Feast

the lessee for years Attorns, and after the years expired the Grantee for life enters, and it was held in this Case that the Grantee by his entry was a Disseisor, and that the grant to him was void, for an Estate of free-hold may not commence *in futuro*, and the grant being void at the beginning, the Attornment after Midsummer, shall not make the Reversion to pass: for *quod ab initio non valet, tractu temporis non convalescit*. Buckley's Case 6. Eliz. in C. B. Co. 2. Rep. f. 55.

Tenant in fee grants a Rent Charge, Proviso, that his person shall not be Charged: the Grantee acknowledgeth a Recognizance according to 23 H. 8. and thereafter releaseth to his Grantor, and now the Conusee sueth an Extent, and being [illegible] against the Grantor as Tertenant. Resolved in this case the Rent is extendable, for notwithstanding the Release it is in esse, as to the Conusee, and cannot be discharged by the Act of the Conusor. *Lillingston's case*, 15 Jac. Co. 7. rep. f. 38. *and vide Seignior Abergavenies case*, 7 Jac. in C. B. Co. 6. rep. f. 78.

If the Husband and Wife be ejected of a term, in the right of his Wife, and the Husband bring an *Ejectione firmæ* in his own

own name, and do recover and die, in this Case his Executors shall have it, and not the Wife, for the recovery doth vest the term in himself, because it was in his name alone; *Co. on Litt. f. 46 b. sect. p. 11. Pl. Com. 428.*

If a man be possest of a Term of forty years in right of his Wife, and make a lease for twenty years, reserving rent and die; here the Executors of the Husband shall have the rent for that term, but the Wife shall have the remainder of the term when the twenty years are out, but if he had granted the whole term, then he had got nothing. *Pl. Com. 260 b. Dame Hales case, Co. on Litt. f. 46. b. and 351. Herns Law of Convey. p. 81 and 82. and vide Womans Lawyer, f. 131. Dyer 264 b. and Finch Law. 3. p. 72.*

A Release made to Tenant for Years before his entry to increase his estate is void; but a release of the rent before entry is good, the tenant may grant away his interest to another before entry: and although the lessor die before entry; yet notwithstanding the lessee may enter into the lands, or if the lessee die before entry, his Executors or Administrators may enter: and if the lease be made to two, and

one of them dies before entry, yet his Interest survives. *Co. on Lit. f. 279. a. 149. E. 28. 32 H. 6. 8. Perkins sect. 602. Vide Cloſe of Aſſiſe p. 50. Co. on Lit. f. 46. b.*

The leſſor cannot grant away the reverſion (before the leſſees entry) by the name of a Reverſion. *Co. on Lit. f. 46. b.*

If one grant to his leſſee for years, that he ſhall have ſo many Eſtovers as ſhall ſerve to repair his houſe, or that he ſhall burn within his houſe or ſuch like, during the term; this is appurtenant to the land, and ſhall go with the ſame as a thing appurtenant, in whoſe hands ſoever the ſame cometh. *Vide Lutterels caſe, 43 Eliz. in B. R. Co. 4. rep. f. 86. 12. Eliz. 381. Finch l. 1. c. 3. p. 15 Co. on Lit. f. 41. a. and Co. 5. Rep. f. 24.*

If a leſſee for years grant a rent charge, and then ſurrendreth, the Rent ſhall be paid during his term to the ſtranger, 1 *El. 198. Finch l. 1. c. 3. p. 27. Noy's Max. p. 7. and vide Pl. Com. f. 225.*

If two Tenants in common do grant a Rent of ten Shillings, this is ſeveral, and they ſhall be charged with twenty ſhillings Rent; but if they make a leaſe, and reſerve ten ſhillings rent, they ſhall have no more than they reſerve, *Vide Latches rep. f. 92.*

f. 99. and Pl. Com. 171. in Hill and Granges case. 2 and 3. P. and M. 140. b. 161. b. Co. on Litt. f. 97. a. and Finch. l. 1. c. 31. p. 67.

If a Feme Covert grant an Annuity by Deed, the Grant is void. And if a man seised of land in right of his Wife, and he grants a rent issuing out of the same lands, without the knowledge of her husband this Grant is void, and so it is notwithstanding that the Husband had knowledge of it, if it be made and delivered without his Assent, or with his Assent, if it be not in his name as well as hers. And if in case the husband were abroad out of the Countrey at the time of such Grant made and delivered, so that it is not known whether he be alive or dead, yet if he be living such Grant is void, insomuch that if the Grantee by force of such grant enter into the land and distrein, the Husband at his return shall have for such entry and distress an action of trespass, *H.* 4. *H.* 4. 13. *H.* 2. *H.* 7. 15. *Perkins sect.* 6.

But where a man is seised of lands in right of his wife and she as a Feme sole without her husband grants a rent by fine to be issuing out of the land, here though his grant shall not bind the husband du-

sing the Coverture, yet if the husband die before he and his wife shall reverse the Fine by error, then it shall bind the wife after his Death. 17 Ass. pl. 17. M. 17 E. 3. 52. Perkins Sect. 90.

If a single woman be an Executrix, and she takes a husband, if all the debts of the Testator are satisfied and paid, she may then deliver the Legacies of the Testator out of the Testators goods in despite of her husband. And if the debts and legacies be all paid, she may give away the goods of the Testator that remain in despite of her husband: but if she give away any goods before the Debts and Legacies are satisfied and paid, then the Husband may have an action of Trespass against the parties that receive them, because this shall amount to *Devastavit*, if the goods that remain of the Testators will not extend to satisfie the debts, &c. *Fr. 13. E. 1. Exec. 119. F. 18. H. 6. 4. Perkins Sect. 7.*

And if there be a difference between the husband and the wife, by reason whereof certain lands of the husband are assigned unto his wife by the husbands friends, and by his assent, and the wife grants a Rent-charge to be issuing out of the same land unto

unto a stranger, this grant is void, Ir. 47 E. 3. 18. *Perkins Sect.* 8.

If an Infant grant a rent by Fine, this Grant is voidable by himself only during his Nonage by Writ of Errour; for if he do not avoid it during his Nonage, it is good for ever both against him and his heir, *Perkins Sect.* 19.

Note that all Chattels, as well real as personal, may be given or granted as well without Deed as with Deed, except in some special cases. And therefore if a man give unto me his Horse, or Cow, or Bow, or a Lance, or his Corn growing upon his land, or a Tree growing upon his land, this is good by word as well as by Deed, Pas. 15. E. 3. 41. *Perkins Sect.* 57.

But if Tenant in Tayl give to me a tree growing upon the land, and dies before that I have cut down the tree, and his issue entreth into the land where the tree is growing; if I now cut down the tree he shall have an Action of trespass, because the tree is annexed to the Free-hold; but it is otherwise if the Donor had been sole tenant of the land in Fee simple in his own right, H. 18 E. 4. 21. *d.* 22. *a. and* P. 18 E. 4. 6 *a. and Perkins Sect.* 58.

It was resolved that underwood growing

ing upon a parcel of a Mannor, may by custom be granted by copy of Court Roll; for it is a thing of perpetuity, to which Custom may extend, for after every cutting it grows again *ex stirpibus*, 37 *Eliz. Hoe and Taylors case*, C. 4. *Rep. f.* 30.

If the Lord lease for years, or life or make any other estate by Deed, or without Deed, of Copy-hold-land, forfeited, or escheated, &c. to him, this land can never be granted again by Copy, for the custom is destroyed: but if the Lord keep it in his hands a long time, or leases it at will, he, his Heirs, or Assigns may regrant it: So if the interruption be tortious, as by disseisin and discent, false verdict, or erroneous judgement: for, *Non valet impedimentum quod de jure non sortitur effectum, & quod contra Legem fit pro infecto habetur*, *Frenches case*, 18 *and* 19 *Eliz. Co.* 4. *Rep. f.* 30.

If a man grant me leave to make a breach from such a Spring in his land unto my Mannor, so that I may lay a Pipe in the land to convey the water to my Mannor in a Conduit, if afterwards my Pipe be broken, I may dig his land to mend the Pipe, &c. *M.* 9. *E.* 4. 35. *b. Perkins sect.* 3. *Brown.* 1 *par.* 225.

An

A deviſe of the profits of lands for years is a deviſe of the lands themſelves for ſo many years as the profits are deviſed, *Tr. 23 Car. 1. B. R. Rygift Pratt. p. 81. Vide Owens Rep. f. 6. and 7. and Pl. com. 534.*

Sometimes the word *Proviſo* ſhall be taken for a condition, but then it muſt have theſe three qualities: 1. It muſt not depend upon another Sentence, nor participate thereof, but ſtand originally of it ſelf. 2. It muſt be the word of the Bargainor, Feoffor, Donor, Leſſor, *&c.* 3. It muſt be compulſory to inforce the Bargainee, Feoffee, Donee, Leſſee, *&c.* to do an act, and where theſe concur it doth make a condition, in what place ſoever it be placed, for *Cujus eſt dare, ejus eſt diſponere*; then ſometimes the word *Proviſo* or Provided doth make a Covenant, ſometimes an Exception, ſometimes it is taken for a Reſervation, ſometimes for an Explanation, as for example in theſe caſes, If the leſſee leaſe lands, provided that he ſhall not alien without the Aſſent of the leſſor *ſub pœna forisfacturæ*, here it is a condition; if I have two Mannors, both of them named *Dale*, and I leaſe my Mannor of *Dale* to one, provided that he ſhall have my Mannor of *Dale* in the occupation of *I. S.* this

this proviso is an Explanation: If a man leases an house, and the lessee covenants that he will repair it, provided always the lessor is contented to find the great Timber, now here it is a Covenant: If I lease my house to C. provided I will have a Chamber my self, this is an Exception of the Chamber. If I make a lease of lands, rendring rent at such Feasts as I. S. shall name, provided that the feast of S. Michael shall be one, here the Proviso is taken for a Reservation, *Vide Lord Cromwell's case, 40 Eliz. Co. 2. rep. f. 70. and Earl of Pembroke and Lord Berkley's case, 36 El. B. R. Goldsborough's rep. p. 130. pl. 27. and Popham's rep. f. 166 and 117.*

If a man make a lease, provided that the lessee or his assigns shall not alien the premisses, without special license of the lessor, &c. and after the lessor giveth license to alien the same, or any part: in this case the lessee may alien and his assigns *ad infinitum* without any more Licence, for the Proviso is determined for ever; and if the lessor die before the lessee alien, yet that does countermand it. *F. N. B. 223. 45 El. in B. R. Co. 4. rep. f. 119. Dumpor's case, and Co. on Lit. f. 52. b. M. 3 Jac. in C. B. Hawes Law of Entry. p. 120.*

If

If the words of a lease be, that it shall not be lawful for the lessee to alien without the assent of the lessor, on pain of forfeiture; this restraint continueth but during the life of the lessor and lessee, *M. 3 E. 6. Dyer 65,66. and Hughes gr. abr. f. par. p. 417. C. 14.*

If a lessee for years devise his whole term to *A.* provided if he die whilest *I. S.* is alive, then the residue shall remain to *I. S.* *A.* Aliens and dies, in this case *I. S.* is without remedy, *Dyer f. 75. Tit. Chattels 23. Done 57. Cowel: Int. p. 143. Hernes Law of Convey. p. 81.*

Reservation is taken divers ways, and hath divers natures, sometimes by way of exception to keep that which a man had before in him still, and then these words are most proper, *Excepta, Reservata, Praeter, Salvis*, &c. and sometimes it doth get and bring forth another thing which was not in him before, and then these words *Tenendum, reservandum, solvendum, reddendum, faciendum*, and such like are most proper, *Vide Ter. de Ley verb. reservation. and Perkins Sect. 525.*

If a man seised of land doth give the same in tayl, reserving twelve pence, the same is good by the word *reservandum*

one

or if he leaſe the ſame for life, rendring for the firſt ſix years three quarters of Wheat, and if he hold over, &c. yielding 5 pounds by the year; this is a good reſervation by this word *reddendum*, &c. *Perkins ſect.* 628, 630.

And if a man ſeiſed of land leaſeth the ſame for life, or giveth it in tayl *Solvend. ſibi & hered. ſuis annuatim* twenty pence, this is a good reſervation; or if he leaſeth the ſame for life, or giveth the ſame in tayl unto a ſtranger *Pro homagio ſuo faciendo*, this is alſo a good reſervation, *Perkins ſect.* 632.

If the husband make a leaſe for years, rendring rent during his life and the life of his wife; this is a good reſervation, and ſhall be during the life of the Survivor of them, *Hill and Hills caſe, Mores Rep. fol.*

If a man and his ſon and their heir apparent by indenture leaſe lands to one to commence after the Fathers death, rendring rent to the Son, in this caſe the reſervation is void, for the reſervation ought to be to the heir or heirs of the leſſor by that name, for that is the only name and word of privity in Law, requiſite in reſervations of rents and conditions.

And

And note a difference between this case where rent is reserved upon a lease of the Ancestors to the heir first, and where the Ancestor grants an Annuity, or makes a warranty for a like charge against his heirs first omitting himself, all such Grants are utterly void, for no man can charge his heirs but as part of himself, and therefore beginning with himself, *Tr.* 12. *Jac. Rot.* 3264. *Oats and Fribs case, Hobart rep. f.* 130.

If lessee for years assign all his term to come in his lease over to another, he cannot reserve a Rent, for if he do it is void, because he hath no interest in the thing, by reason of which the rent reserved should be paid, *P.* 24 *Car.* 1. *B.R.* 21 *April* 1648. *inter Leach and Davy. regist. brall. p.* 191.

If a man make a lease reserving rent to him, without naming his heirs, the rent shall then determine upon his death, if he die within the term; or if it be to him and his Assigns, or his Executors it is all one: but if it be reserved generally without shewing to whom, it shall go to his heir, *Co. on Lit. f.* 47. *a. Wotton and Edwins case vouched there, and Latchet rep. f.* 274. *the same case, H.* 33 *El. rot.* 1341. *Richmond*

and

and Butchers case, Latches rep. f. 275. *H.* 8. 19. *Finch l.* 1. *c.* 3. *p.* 65. *Goldsbor. rep. p.* 148. *pl.* 68. *vide Pasc. consultum p.* 92. *vide Brownlow* 1. *par f.* 61.

If a man make a lease to another for twenty five years, rendring therefore yearly during the said term to the said lessor and his assigns so much rent, here if the lessee die within the term, *Crome* Chief Justice held that the rent did continue, and Judgment was given accordingly in the case between *Surry* and *Brown*, *H.* 20 *Jac. rot.* 177. *Latch f.* 99. But see *Latch. f.* 225. for there Justice *Doderidge* said, that it was not adjudged so in *Surry* and *Browns* case; and there in the case between *Surry* and *Cole*, it is strongly argued that the rent was gone upon the lessors death, and I find no Judgment there in the case, but that the Justices took a further day to advise therein, *Vide Surrey and Coles case, M.* 3 *Car.* 1 *Latches rep. f.* 255, 256, 257 *and* 265, 266, 267.

If a man lease land to another by Deed Indented, Except and always reserved to the lessor all great trees growing upon the same land, by this lease the great trees shall not pass, *Pl.* 22 *E.* 3. 8. *Perkins Sect.* 642. *vide Pepal and Hammingtons case* 27 *Eliz. in B. R. Popham rep. f.* 117, *and* 118.

If

If two Copartners make a lease reserving rent, they shall have this rent in common, as they have the reversion; but if afterwards they grant the reversion excepting the rent, then they shall be joyntenants of the rent, *Finch l. 1. c. 3. p. 8.*

If a man let lands for years, and doe reserve a rent, and a stranger doth recover part of the land, then the rent shall be apportioned, that is, divided, and the lessee shall pay, having respect to that which is recovered, and to that which yet remaineth in his hands, according to the value, *Co. on Litt f. 148. b. Dyer 56. and &c.*

An exception in a lease is always of such things which the lessor hath in him before the lease made, with which things the lessee is not to meddle.

As if a man be seised of four Acres of land and a house in the Town of *Dale*, in which house is a Chamber, and he doth enfeoff a stranger of all his lands and tenements by Deed which he hath in the town of *Dale*, *Excepto* or *reservato sibi* the Chamber, or *prater* the Chamber, and sheweth the certainty thereof; In this case the Chamber shall not pass, *Perkins sect. 641.*

And

And if a man selleth a Wood except 20 Oakes, and theweth which in certainty, this is a good exception 16 *Eliz. Fines 6.*

If a man make a lease of a Mannor an Acre excepted, this Acre is no part of the Mannor as to the lessor, but as to him that hath right to demand the Mannor, by reigne Title it remains parcel, and therefore he shall make no forepryze in his Writ. 1. *And. P. M.* 143. *Finch l.* 1. *c.* 3. *pag.* 28. *Perkins* 643. *Philips Ex. of Law pag.* 122.

A lease of a Mannor excepting the services, this exception is void; for they are parcel of the thing let, and so it is in the lease of a Mannor excepting and reserving the Courts, Leets, and Law-days, Fines, Heriots, Reliefs, Escheats, Perquisites and Profits of Courts; except it be in the case of the King, and then such a lease of a Mannor with such exception may be good. *Finch l.* 1. *c.* 3. *pag.* 53. *Tr.* 13 *Jac. Rot.* 607. *Brown and Goldsmiths case, Hobart Rep. fo.* 108.

If one make a lease excepting a Close and wood, the Law giveth him a way to it. 14 *H.* 8. 1.

Surrenders are either absolute or conditional

tional, and there are two manner of Surrender, viz. a Surrender in Deed, and a Surrender in Law: now when the words of the lessee to his lessor prove a sufficient Assent that he shall have again the thing which he holdeth of his lessor, they are words sufficient to make a Surrender, if the lessor do agree to it, and this is called a Surrender in Deed. *Perkins sect. 606.*

As if lessee for life or term of Land say unto his lessor, that his will is, that his lessor shall enter into the land which he holdeth of him for diss, or years, and shall have the same again, and by force thereof the lessor doth enter into the same, this is a good Surrender. But if the lessor doth not enter by force thereof, nor agreeth thereunto; then this Surrender is void: for the lessee may not surrender to his lessor against his will. But if he to whom this Surrender is made do once agree to it, he cannot afterwards disagree thereunto. *Perkins sect. 608.*

And if the lessee cometh unto his lessor, and saith unto him, that he will occupy the Land no longer, and the lessor by force thereof doth enter, this is a good Surrender. And if the lessee do say unto his les-

for

for I do Surrender unto you the Land which I hold of your lease, or if he say I hold such lands, or house, &c. of your lease, and sheweth in certain the same lands or house, &c. and then saith I surrender unto you the same lands and house, &c. and the lessor agrees thereunto, this is a good Surrender. *Perkins Sect. 609. Howard Law of Country, pag. 90.*

And if *I.S.* holdeth one Acre of Land for years of the lease of *C. D.* and another Acre for life of him, and say unto him I Surrender unto you all the Land which I hold of your lease, this is a good Surrender for both Acres; and the reason is because he doth not express in certain which Land he doth Surrender: but if he had Surrendered the Land which he held of his lease for years, then the lessor should not have the other land which the lessee held for life, but the Lands for years only, *& sic è converso. See Perkins Sect. 610.*

If I hold one Acre of Land for life of the lease of the Father of *I. S.* and another Acre of Land of his lease, and I Surrender unto *I. S.* the land which I hold of his lease, in this case he shall not have the Land which I hold of his Father, notwithstanding that the reversion of the same Acre

...ne be in him by descent from his Father. *Perkins Sect.* 611.

If a Woman who is Tenant in Dower take a Husband, and he doth Surrender the Land which he holdeth in right of his wife, for the life of the Wife; here if the Husband die before his wife, or if they be divorced *causa præcontractus*, then the wife may enter, and defeat the Surrender, notwithstanding that he to whom the Surrender was made died seised of the Land in his demesne, as of Fee, and his Heir be in by descent; and so it is if the wife had joyned with her husband in the Surrender, &c. *Perkins Sect.* 612.

But if a Feme sole, who is lessee for years of Land, or an House, &c. do take an Husband, and he Surrendereth, and dieth before the years are out, here she shall be bound by this Surrender. *Perkins Sect.* 613.

If two men seised of Land in Fee, do lease the same unto a stranger for life, and he doth surrender all his Estate unto one of them, this shall enure unto them both; but if he Surrender unto them for twenty years this shall not take effect as a Surrender; for there remaineth an Interest in the lessee, which is as a mean remainder be-

tween

twcen the Estate which is surrendred and their reverſion, &c. In the ſame manner as it is of a ſurrender of Land, ſo it is of ſurrender of Deeds, or any other thing *mutatis mutandis*. *Perkins Sect.* 145.

If a ſingle woman ſeiſed of land in Fee leaſeth the ſame to a ſtranger for life, and then taketh husband, and the Leſſee doth grant his Eſtate to the husband, this is a ſurrender; And yet the husband is ſeiſed of the reverſion in Fee, which is immediate unto the Eſtate of the Leſſee, *viz.* in the right of his wife and not in his own right, &c. *Perkins ſect.* 627.

If Tenant in Dower be of Land, and ſhe granteth her Eſtate unto him in the reverſion, reſerving Rent, this is a ſurrender, and the reſervation is void unleſs it be by Deed indented, and ſhe cannot diſtrein for the Rent unleſs there be a clauſe of diſtreſs in the Deed; and the reaſon is, becauſe ſhe hath no reverſion left in her, &c. *Perkins ſect.* 623.

A ſurrender of a Free-hold made by Deed indented upon condition is good, and of an Eſtate for years upon condition, it is good without Deed. *Perkins ſect.* 624.

If a Leſſee for years do take a new leaſe for more years, this is a ſurrender in Law

of

of the old leafe. *Hill. 3 Car. 1. Rot. 1392. in B. R. Wat and Maidwells caſe. Hutton. Rep. 104. Perkins ſec. 617.*

It behoveth that he that doth ſurrender be ſeiſed or poſſeſſed of the Eſtate at the time of the ſurrender, otherwiſe it is not good except in ſpecial caſes; therefore leſſee for years cannot ſurrender before his Term begin, neither can he ſurrender part of his leaſe, but he may grant part of it; but after his Term is begun he may ſurrender, although he have not yet entred upon his Farm; but if after his entry he be ouſted by a ſtranger, and after his ouſter and before his re-entry he ſurrenders to his leſſor, this is not good; becauſe he hath but a right at the time of the ſurrender, &c. And therefore if a woman hath Title to have Dower by the common law, doth ſurrender to him againſt whom ſhe is to have it, before ſhe hath recovered or had Aſſignment of it, this is void. *Noyes Maxims pag. 74. Perkins ſec. 599, 600, 601, 602, 603.*

If leſſee for life accept of a leaſe for years, this is a ſurrender in Law of his leaſe for life. *Regiſt. Prac. pag. 305. P. 24 Car. 1. BR. Sheppards Touchſtone pag. 301. 14 H. 8. 15. vide Pla. 194.*

If a feme for life be of Land, the remainder to a stranger for years, and the feme for life doth surrender unto him in the remainder for years, it shall not take effect as a surrender, because that an estate for life cannot drown in an Estate for years. *Perkins* sect. 589.

Note that those things which cannot take effect without Deed, cannot be surrendred without Deed, except in some special cases. And therefore if a man seised of Rent, Tithes, Common, &c. grants the same for life or years, the Grantee cannot surrender them without Deed, because they cannot be granted without Deed, and note that a surrender cannot be made unto him, who hath a joynt Estate in the free-hold, or Term of years, with him that is to make the surrender. *Perkins* sect. 581, 582, 584.

If a Copy-holder for life surrender to the use of another, who is admitted, by this the first Copy-holders Estate is clearly determined, but if Copy-holder in fee surrender to the use of another for life, after his death he shall have it again. *King and Lords case, H. 5. Car. 1. B. R. rot. 793. Cro. 1 part. 148.*

If an Infant surrender Copy-hold land

to

to another who is admitted; this is not good to bear the estate, for he may enter at his full age, *Gosler* and *Graves* case, *Mirr. rep. fo.*

If a woman Copy-holder take an husband who surrenders, this shall be to the use and behoof of the wife, now her Heir, 35 *Eliz. Baskets* and *Dibbins* case, *Co. 4. rep. fo.* 23.

The Lord of a Mannor seised a Copy-hold without cause, and granted it to another in Fee; the Grantee died and his heir was admitted; then the first Copy-holder died, and his Heir entred upon the Heir of the Grantee, and surrendred to the use of a stranger; and here the Heirs entry before Admittion was adjudged lawful, and his surrender to the use of a stranger good; and it was resolved that the dissent of a Copy-holder doth not Toll or take away the entry of another Copy-holder who hath right. Tr. 2. *Jac. B. R. Joyner* and *Lambers* case, *Co. 2. part.* 30. and *vide* 35 *Eliz. Grosmer* and *Todds* case, *Co. 4. rep. fo.* 23.

If the lessor make a Feoffment, and the lessee for years giveth leave to the lessor to make livery and seisin of the premisses, saving to himself his lease, and he doth see,

here the Term is not gone nor surrendred, for the lessee had an interest, which could not be surrendred without his assent to surrender; and here no such matter doth appear, wherefore he may enter and enjoy the Term, and the Rent is renewed: but it is otherwise with a lease for life, for there the Rent is extinct. *Noys Maxims pag. 59. vide Moors Rep. pl. 42.*

If two Joynt-tenants in fee use of one Acre of Land, and lease the same to a stranger for life, and the lessee granteth his Estate to one of the lessors, this is a surrender for the whole Acre, and not for a Moiety. *Jones quere 3 E. 3. 19. Perkins sect. 80.*

If Tenant for life enfeoff him in the remainder for life, this is a surrender, and no forfeiture. *Co. on Lit. 42. a. 19 E. 3. Fitz. & Perkins sect. 638.*

If Tenant for life make a lease by Deed or without Deed to him in the remainder, or reversion; this is no forfeiture because he in remainder is a party: nor is it no surrender because the whole Estate of Tenant for life is not given. *Co. on Lit. 42. a. 13 E. 4. Dower 95.*

And if a woman Tenant for life take husband, and by Deed indented they make a lease to him in the reversion for the life of

of the husband, reserving a Rent: this is neither forfeiture nor surrender: for the reasons in the last case mentioned. *Co. on Lit. fo. 42. a. 29. Ass. p. 60.*

But if a woman Tenant for life take husband, and they make a lease to him in the reversion for the life of the wife, reserving rent, this is a surrender, for their whole Estate is granted, and the reservation is void.

If lessee for twenty years take a lease for ten years to begin presently, upon condition that if such a thing be not done to be void: here the first lease is surrendred in Law: and though the second lease be void upon the condition broken, yet the surrender remaineth good. *Co. Lit. fo. 218. b. Plowd. in Fulmerston's case, 107. b. vide Popham's Rep. fo. 9. Hetley Law of Convey. pag. 73. and 74. Finch, l. 1. c. 4. pag. 62. & and 2. P. and M. 107.*

If lessee for life or years of a house or Lands, remove his goods out of the house and Lands, by reason of the greatness of the Rent, or because he is behind in his Rent, or for any other cause, and the lessor do enter into the house and Land, this is no surrender of the Tenant. *21 Ass. 20. Fr. 8. 6. 46. Perkins sec. 617.*

When the lessee giveth, granteth, sel-leth, or assigneth his lease or interest to another, he who hath it is called an Assignee; and there is Assignee in Deed, and Assignee in Law. Assignee in Deed is he, as one of before named; Assignee in Law is every Executor named by the Testator in his Testament. As if a lease be made to a man and his Assigns, and he maketh his Executors and dieth without assignment of the lease to any other; now the Executors shall have the same state because they are his Assigns in Law, &c.

If the lessee for years assign over his term and die, his Executors shall not be charged for rent due after his death, *Nov. Maxims p. 72. 37 Eliz. B. R. Overton and Siddal case, cited in Co. 3. rep. Sir John Sands case in Goldsb. rep. p. 120. pl. 6.*

And if the Executors or Administrators of lessee for years assign over their interest, neither doth an Action of debt lie against them for rent due after the assignment, *Overton and Siddal's case aforesaid, Nov. Maxims p. 72. Ironmonger and Nowlands case, H. 3 Car. 2. rot. 92. tamen quære* if the lessor must not have notice of the assignment and consent to it, for otherwise they may assign to a poor man, who is

not

not able to manure his land, *Vide Marrow and Turpins case, P. 41 Eliz. in Co. 8. rep. 2485. Mores rep. s. the same resolved in Walkers case, Co. 3. rep.*

If a lessee for years assign over his term, the lessor may charge which of them he will, but if he once accept of the Rent from the Assignee, he hath determined his election, and cannot afterward bring an Action of Debt against the lessee for rent due after the assignment, *Wolton and Harrisons, 29 Eliz. in B. R. Co. 3. rep. f. 24. Mores rep. the same. Vide March and Brocas case, M. 11 Jac. in B. R. Bulstr. 2. par. 251. Hernes Law of Covenant, p. 110.*

If the lessor grant away the Reversion after the assignment of the lessee, in this case the Grantee cannot have an action against the lessee for the rent, because there is no privity between them, but he is left to his remedy against the Assignee, *Vaughs and Glovers case, 39 Eliz. cited in Walkers case, vide Humble and Olivers case, M. 36 El. in B. R. Popham rep. 155. and 36 El. rot. 420. Brownlow 1 par. p. 56.*

But it was said by *Doderidge* and *Montague* Justices, that if the lessee for years covenant to sustain and uphold the houses in as good plight as he found them at his entrance

rance, and after he aſſigneth over his term, and the leſſor the reverſion; in this caſe the Aſſignee of the reverſion may have an action of covenant for the breach of this covenant againſt the firſt leſſee, 15 *Jac. in B. R. Goldeſtr rep.* 271.

Leſſee for years covenants for him, his Executors, and Adminiſtrators, to leave fifteen Acres every year for paſture, *ſic ſolitum*; and afterwards aſſigns over his eſtate to another, who ploughs up all every year, and leaves none unploughed, and in this caſe it was held by the Court that an action of covenant laid againſt the Aſſignee though he were not named in the covenant, becauſe it is for the benefit of the eſtate. But a covenant to do a Collateral act, as to build *de novo*, or ſuch like, ſhall not bind the aſſignee unleſs he be named, *Pa. 4. Jac. in B. R. rot. 607. Cookes and Cooks caſe, Cro. 2 par.* 125.

When the covenant doth extend to charge *in eſſe*, parcel of the Demiſe, there the thing to be done is appurtenant, and *quodammodo* annexed to the thing, and ſhall bind the Aſſignee though he be not named; as a Covenant to repair the houſe, &c. In this and ſuch like caſes the aſſignee, and aſſignees of aſſignees *in infinitum*,

thers, and all others that shall come to the land by the act of Law, or by the act of the parties shall be bound and charged by such like covenants; but if the Covenant be annexed to a thing not *in esse* before, but *de novo* to be erected on the thing, as to set up a new house, or the like, in this case it will not bind the Assignees unless they be named in the covenant; and if the covenant be to do a thing meerly Collateral, in this case it will not charge the Assignees though expresly named. *Bro. Dissent.* 40. *Dyer* 27. *Sheppards Touchstone, &c. fo.* 178. *Co.* 5. *rep.* 17.

A lease is made of lands in *Middlesex*, and sealed in *London*, the lessee assigns over his interest; the lessor dies, and the rent is arrear, and the Administrator of the lessor brought an action of debt in *London* for the same, and it was held not good, for where debt is brought upon a lease for years upon the Contract, there it may be brought in any place; but where it is brought upon the privity of the Contract, as in this case, there it ought to be brought in the County where the land lies. *Hil.* 2. *Car.* 1. *Smith and Waynes case, Latches rep. fo.* 197. *Vide Pasc.* 6. *Car.* 1. *Sir Stephen Boord and Cudmores case, Cro.* 1. *par.* 232.

If a leafe for years be made to a [illegible] without any confideration, the leffee [illegible] be feifed to his own ufe, *Perkins* [illegible] 534.

If a man make a leafe to another [illegible] his heirs for twenty years, intending th[illegible] his heirs fhall have it; yet if the leffee d[illegible] within the term, notwithftanding the [illegible] tent, the Executors and not the heir fhall have it, *Do. and Stud. l.* 1. *c.* 24. *Co.* [illegible] *rep. f.* 87. *Touchftone of Affurances pag.* 278.

If a man let an houfe *cum pertinentiis* no lands pafs; but if it be *cum omnibus terris pertinentibus*, the lands ufed with the fame do pafs, *Plowd.* [illegible] *f.* 170, 273, [illegible] *Bro. Leafe* [illegible] 53. [illegible] *Feoffments* 53. *vide Hern and Allens cafe, Hill.* 1. *Car.* [illegible] *rot.* [illegible] *Crokes rep. part.* 2.

If a man take a leafe of his own land by deed indented, he is then concluded to fay that the leffor had nothing in the land at the time of the leafe made, but after the leafe is out the Eftoppel is then removed, *Br. Eftoppel* [illegible] *M.* 32, 33 *Eliz. in C. B.* [illegible] *Londons cafe adjudged, Co. on Litl. f.* 47. *b. Vide Moores rep. f.* [illegible] *Jamies cafe, and terms de Ley verb. Eftoppel.* [illegible]

If two Joyntenants are of a leafe for

years

years, and the one of them bids the other go out of the house, and he does so; here he may have an *Ejectione firmæ* against his Fellow as well as if he had put him out, 34 *Car. 1. Brooking's case, Chancels rep. 3d. 111. pl. 189. and Greenwood's case, p. 146. pl. 205.*

If a Deed begin with these words, *This Indenture made &c.* yet it is not an Indenture if it be not actually indented or cut at the top of the Parchment or Paper; but yet it may work as a Deed Poll, though it cannot work as an Indenture, 28 *Eliz. in B. R. Stile's case, Cro. rep. f. 20.*

A Deed of Indenture made betwixt two ought to be sealed and Delivered by both parties to the Deed, otherwise it cannot be said to be a Deed Indented, 11. 23 *Car. B. R. Rigell. præsidale p. 167.*

CHAP.

CHAP. III.

Several Cases touching Payments of Rents, Acceptance, Remainders, Confirmations, Extinguishments, Demands, Re-entries, Limitations, and Attornments, &c. upon Leases.

IF a Lease be made rendring Rent at *May day* and *Martinmas*, or within fifteen days after either of the said Feasts, in this case the Tenant need not pay till the fifteenth day, for that is the legal day, and the other only a voluntary day of payment, and not coercive: And if there be a clause in the lease, that if it shall happen the said rent to be behind in part, or in all by the space of 15 days next after any of the said days of payment aforesaid, then the lease to be void; in this case the lessee shall have thirty days, that is, fifteen days after the fifteen days to pay his rent in safeguard of his lease; and so the *quere* in the 3 and 4. *P.* and *M. Dyer* 142. is well resolved,

resolved, M. 7 Jac. in C. B. Hare and Savils case, in Brownlowe 2. par. p. 273. Hernes Law of Convey. pag. 231. Sheppards Touchstone, p. 138. vide in Cluns case, Co. 10. Rep.

If a man lease for years rendring rent at the Feasts of the Annunciation and Michaelmas, or within fifteen days after; here if the Lessor die after either of the Feasts, and before the fifteen days be out, the heir shall then have that rent as incident to the Reversion, and not the Executors as rent behind, because it was not due till the fifteenth day; for the disjunctive is added for the benefit of the Tenant, if the lessee before the day pay the rent, this is voluntary and not satisfactory, but it is good to give seisin: if the payment be in the Morning, and the lessor die at Noon; though this payment be voluntary too (for he need not pay till Night) yet this is satisfactory against the heir, 11 Jac. in B.R. Cluns case, Co. 10. rep. f. 227. Hernes Law of Convey. p. 22, 23.

If a lease be made for five years, rendring rent at Lady day and Michaelmas yearly, or within ten days after; in this case the lessee shall have the liberty of the tenth day during the term; but at the end of

of the term he shall pay it at *Michaelmas*, and not at the tenth day, for that is without the term, and if the lessee had the liberty, then his lessor should be without remedy for that rent, therefore rather than the lessee should lose his rent, the Law rejects the last ten days, *M. 7 Jac. Brewick and Fosters case. Brownlows 2 part. p.* 103.

If Tenant in Dower make a lease for years, rendring rent, and then takes husband, and the rent is arrear, and the husband dies, in this case the Executors of the husband shall have the rent which was behind at his death, *Vide Moores Rep. pl.* 25.

If a lease be made in *May*, rendring rent at *May day* and *Martinmast*, in this case the first payment shall be at *Martinmast* next after the making of the said lease, notwithstanding that *May day* be first named, *Co. on Lit. f.* 217. *and* 5. *rep. f.* 131.

If Tenant in Tayl let part of the land accustomably letten, reserving the rent *pro rata*, or more, this is a good lease of such lands: or if the accustomable rent were formerly payable at four Feasts, and now it is reserved and payable all at one Feast, yet it is good enough, *Co. on Litt. f.* 44.

f. 292. b. Hernes Law of Convey. p. 68.

If the lessor Covenant that the lessee shall enjoy without let, trouble, interruption, &c. and afterwards he forbids an Under-tenant to pay his rent to the lessee, this is no breach of Covenant, if after he forbid him he do not pay his rent notwithstanding. *Tr. 9 Jac. in C.B. rot. 2160. Wrotcot and Linesey vers. Nine, in Brownlowe 1 par. p.81.*

If a lease for years be made to an Infant, this lease is voidable, and if he wave the possession before the rent day come, then an action of debt for the Rent will not lie against him; but if he enter upon the land and occupy it till the rent day come, he is then chargeable, or if he attain to Age before the rent day come he is chargeable, *P. 11 Jac. in C.B. Ketleys case, Brownlowe 1 par. p. 120.*

If a man lease for years, rendring rent at *Martinmas*, and other covenants, if the lessee be bound in an obligation to pay the rent precisely; in this case he must seek the lessor to pay him, but if he be bound to perform the Covenants, &c. he may then tender it upon the land (if no other place be agreed upon) and it shall suffice, for the payment is of the nature of the rent

reserved.

reserved, but it is said by some, that when the Bond is for performance of Covenants generally, there a demand must be made of the rent, or else the lessor shall not take advantage of the penalty of the Bond, *Quære, Noy's Maxims,* p. 80. 6 E. 6. *Bro. Tender.* 20. P. 10. *Jac. in C. B. Manly and Jennings Case, Brownlows* 2. *par.* p. 176.

If I be seised of lands, and lease the same to a stranger for life or years, reserving ten shillings rent to me, &c. payable at *Easter*, and the lessee binds himself to me in a bond of one hundred pounds, to pay the rent reserved upon the lease justly according to Law; if before any day of payment I do put the lessee out of part of the land, and he doth occupy the residue for the whole Term, and will not pay any rent: yet the Bond is not forfeited; for by the putting out of the lessee of parcel of the land, the whole rent is in suspence; but if one day of payment be past before the Ouster, then he must pay the rent, or else he forfeiteth his Bond, *Vide P.* 9 *H.* 4. *fitz. in B.* 45. *E.* 3. 31. *M.* 44 *E.* 3. 37. *Park. Sect.* 825.

If a stranger who hath not any right do put out the lessee for years of the same

land:

and before any day of payment, and keep possession thereof until the day of payment be past, yet the lessee ought to pay the rent at the day whereon it ought to be paid, or otherwise he forfeits his Bond. 28 H. 6. Perkins Sect. 826. vide M. 29 Car. 1. 1. in B. R. Paradine and Jones cited Styles rep. f. 47, 48.

If three Copartners be seised of a Manner, and one of them in her own name, and without the agreement of the other two, doth lease the whole Manor unto J. S. for four years paying five pounds yearly at the Feast of Easter unto the lessor and her heirs, and J. S. doth bind himself in forty pounds unto his lessor to pay the rent reserved, &c. And before any day of payment the other two Copartners which did not consent to the lease do put the lessee out of the whole Manor, and keep the possession until the day of payment of the rent incurred, yet it behoveth the lessee to pay the third part of the rent reserved to his lessor, otherwise he forfeits his Bond: for the two copartners who put him out have no right but to two parts of the Manner, M. 12 H. 8. 3. Perkins Sect. 828.

Rent payable at a day, the party hath all

all the day till night to pay it; but if it be a great Sum, as five hundred or one thousand pound, he must then be ready as long before Sun set as the money may be told for the other is not bound to tell it in the night, 1 *Mar.* 172. *b. Finch l.* 1. *c.* 3. *p.* 1. *Noys Maxims p.* 81. *Herwet Law Comm. p.* 30. *and Wades case*, 43 *Eliz. in C.B. Co.* 5. *lib. f.* 114.

If a Parson let his Glebe land to a Layman, the lessee shall pay Tithes to the Parson besides the rent, because they are common right, *Finch l.* 2. *c.* 1. *p.* 88. 32 H. 8. Bro. *Dismes* 17. *Harris and Cottons case, Brownlows* 1. *par.* 69.

If a man make a lease for years rendering rent at the Feast of St. *Michael*, and about ten of the Clock in the morning on *Michaelmas* day the lessor dies; now if the rent be unpaid the heir shall have it, but if the Tenant pay it that morning before the lessor die, then the Executors shall have it, *Gold. borough his rep.* 98. *pl.* 17. *and see in Clauns case, Co.* 10. *rep. f.* 127.

And so if a man lease lands and die before one of the rent days, the Heir shall have the rent due at the next rent day after his death, but if there were any rent arrear at the rent day before the lessors death

death, then the Executors or Administrators shall have that, and may either distrein or have an Action of Debt for it.

If a man lease a Stock of Cattel or other goods, rendring rent at several days, he shall not have an action of debt till all the days be expired: and so it is upon an Obligation with several days of payment, for these are personal Contracts: but in case of a lease for years of lands, &c. it is otherwise, for that is a real contract, and the lessor may have an action of debt after every day for his rent, or he may distrein for it, *Co. on Litt. f.* 47. *b.* and 292. *b. F.N. B.* 267.

A man is not bound to pay an Annuity without an acquittance, but a rent service or rent charge he is: and therefore in an action of debt brought against a man for rent due upon an Indenture of demise of lands he may plead payment without an acquittance, *Perkins Sect.* 780. *Regist. Prohibicio, f.* 258. *Kitchin* 320. *b.* 1 *H.* 5. *f.* 6. *and vide* 3 *E.* 4. 27. *a.*

If the King make a lease rendring rent without limiting any place, or to whose hands, the lessee may either pay it to the Exchequer, or to the Bailiffs or Receivers

yers, of the King: When a Common person appoints no place of payment, the Law appoints it upon the land, and there the demand must be made. And if the King grants over such lands to another, then the Grantee cannot force the Tenant to go further than the Land for the payment of his Rent, for now the Rent shall ensue the nature of other rents reserved by common persons, and those are payable upon the land. *Hill. 43. Eliz. Barrough and Taylors case, Goldsburroughs rep. p. 12. pl. 9. Moors rep. the same, and 38 Eliz. in B.R. Co. 4. rep. f. 72. the same case, and vide Co. on Litt. f. 201. b.*

If two Joyntenants be, and they make a lease for years by Parol, or Deed-Poll, reserving a rent to one of them; yet this shall enure to them both: but if it be by deed indented, it shall enure to him alone to whom his reserved by way of conclusion. *Co. on Litt. f. 47. a. and Co. 8. rep. f. 70. 71. 3 Eliz. 4. a.*

If a lease be of land, and a flock of Sheep, though the Sheep die, or that part of the Land is surrounded with the Sea, yet some are of opinion that the whole rent shall issue out of the Remainder; others hold that it shall be apportioned, because

because it is the Act of God, and *Actus Dei nemini facit injuriam. Dyer 56. Ir. 35 H.8.*

The lessor upon a lease at will may distrein for Rent Arrear, but if he impound the distress in the ground letten at will, this will is then determined. *Co. on Litt. fol. 57. b.*

If the heir make a lease for life to a stranger reserving rent, against whom the mother recovers Dower and dieth, here the lessee shall have the land again for his life, and the Rent is revived. *Co. on Litt. fo. 42. a. 7 H. 5. 4.*

An Action brought for Rent or breach of Covenant upon a lease, may be laid either in the County where the lease was made, or in the County where the Lands lie, that are let by the lease: but if it be an Action of Debt against an Administrator for Rent due by the intestate, then it must be in the County where the contract was made; and for Rent due in the Administrators time since his letters of Administration granted, then the Action must be brought in the County where the Lands lie for which the Rent is due. *M. 22 Car. 1. in B. R.* and *p. 23 Car. 1. in B. R. Styles Regist. Practicale pag. 8.* and *103.*

Upon

Upon a Lease for years he may reserve the Rent to be in the delivery of Hens, Capons, Geese, Turkies, Oxen, Sheep, Roses, Spurs, Bows, Shafts, Hose, Hawkes, Pepper, Cumine, Wheat, or other profit that lieth in Render, Office, Attendance, and such like, as well as in paying of money. *Co. on Litt. fo. 142. Perkins Sect. 696.*

Acceptance is a taking in good part and as it were in agreeing unto some Act done before, which might have been undone and avoided (if such acceptance had not been) by him or them that so accepted. As for example, if the Successor of a Bishop, Abbot, or Prior, accept the Rent upon a lease for years reserved by his predecessor, he shall not now avoid the lease, for it was but only voidable, and his acceptance hath confirmed and made it good. *Termes de Ley verb. Acceptance. 7. E. 6. Br. Leases, 33. 32 H.8. Dyer 45. Co. 3. Rep. fo. 63.*

The acceptance of a Rent upon a void lease will not make it good: but if it be only voidable it will. *32 H. 8. Br. Acceptance 14.*

The acceptance of a Redemise to begin presently, is a suspension of the Rent before any entry; but it is otherwise if it be

be to begin in futuro. Noys Maxims pag. 70.

Acceptance of a Rent which is not in esse not due to him that accepts it doth not affirm the lease: as where lands are given to the husband and wife, and the Heirs of the body of the husband, and he leases the same and dies, and the issue accepts the Rent of the lessee in his mothers life, and after she dies: now the issue may avoid the lease, for when he accepted the Rent, it was due to his Mother and not to him. See Co. 3. Rep. f. 66. in Pennant's case.

If the successor of a Parson or Vicar accept the Rent of a lease for years made by his predecessor, yet it is worth nothing, for the lease is void by death: but it is otherwise of a lease for life, Co. ubi supra; 21 H. 8. Bro. Leases, 19. 32 H. 8. Dean 20. Leases 52. Revell and Harris case, H. 43. Eliz. Goldsbor, Rep. pag. 138. pl. 44. Vide Dyer 3337.

If he that hath Rent-service or Rent-charge accepts the Rent due at the last day, and gives an acquittance for it; all the Arrearages of Rent due before are hereby discharged. Co. on Litt. fo. 373. a. 11. H. 4. 55. 10 Eliz. Dyer 271. Hermes Law of Conney. pag. 40. Hopkins and Mor-

ton

rent case vouched in *Pennant's* case, *Co. 3. Lib.*

Tenant in Tayl makes a leafe for 7 years, to commence ten years after his death rendring Rent; and after he dies, and the iſſue enters and enfeoffs *B.* the ten years expires, and then the leſſee enters here if *B.* accepts the Rent it makes the leafe good. *Co. on Litt. fo 46. b. Pl. Com. f. 437. a.*

If the husband and wife let the land of the wife for years rendring Rent, and after the husband dies, and ſhe before any day of payment takes another, who accepts the Rent and dies; here it is ſaid that ſhe cannot ouſt the Tenant, becauſe ſhe might have avoided the leaſe before the day at her pleaſure, which now ſhe hath reſigned to him who was her ſecond husband, *Paſch. 4 and 5. P. and M. Dyer*, 160. *Womans Lawyer*, pag. 134.

If a leaſe be made rendring Rent upon condition of re-entry, and the leſſee pays his Rent to his leſſor, and he accepts of it and puts it in his purſe; and afterwards he finds that he had received counterfeit money, and refuſeth to carry the money away, but enters for the condition broken; here his entry is not lawful, for when he had

had accepted of the money, the same was at his peril; and after allowance once of it he cannot then take any exceptions to it, but is barred by his first acceptance. *Trin. 43 Eliz. rot. 406. C. B. Vane* and *Studleys* case *Co. 3. rep. fo. 114.*

If a Copy-holder commit waste, whereby a forfeiture accrueth to the Lord, who afterwards accepteth of the Rent, this doth not bar the Lord but he may enter for the forfeiture of the Tenant, notwithstanding the acceptance of the Rent. *M. 29. Eliz. in B. R. Godbold fo. 47.*

If a Copyholder forfeit his Estate, and then surrenders to the Lord who accepts it not knowing of the forfeiture; yet this is no dispensation of the forfeiture; *Hill. 4. Car. 1. rot. 496. B. R. Matthews* and *Whetstones* case, *Cro. 1. par. 169.*

If Tenant for life lease Lands for years and dies, the lease is void, and the Rent reserved upon the lease is determined, and acceptance by him in remainder will not affirm it, for when it is once void by death, no acceptance after will make it good.

If the husband and wife let the lands of the wife for years, rendring rent, and the husband dies, if the wife accept the Rent, she hath affirmed the lease. *Kitchen p. 342.*

6. 3 *H.* 6. *fo.* 22. 1 *H.* 6. *fo. ibid.* 21 *H.* 6. ... *Termes de Ley verb. Acceptance. Critica Juris Ingeniosa pag.* 2.

If Tenant in Dower lease for years and die, the lease is void, and acceptance of Rent by the heir will not make it good again. 25 *H.* 8. *Bro. Tit. Ancestor* 24.

If a man seised in fee let for ten years, and after selleth the land, and taketh back an estate to him and his wife, and then the husband and wife lease for twenty years reserving Rent, and the husband dies, and the wife accepts the Rent during the first ten years: yet this doth not affirm the second lease, for the acceptance of the Rent before the lease beginneth, and so before any rent be due, is no acceptance at all. *Finch l.* 1. *C.* 4. *pag.* 68. 21 *Eliz.* 563. *Phillips pr. of Law pag.* 164.

If an Infant be seised of lands in Fee simple, and he makes a lease thereof for years rendring no rent: this lease is void, but if there be a rent reserved upon the lease, then the lease is but only voidable, and may by the acceptance of the rent by the infant after his full age be made good. *Pl. Com.* 545. 9 *H.* 7. 24. *Pasc.* 18 *E.* 4. *fo.* 2. *a.*

There is a diversity between a lease for life

me, and a leafe for years, in case of a leafe for life, though the conclusion of the condition be that the leafe shall be void, yet acceptance of the rent due after the breach doth affirm it and make it good again; for the Free hold being created by livery cannot be determined before entry. *Co. 3. rep. fol. 64. Sheppards Touchstone, pag. 280.*

Remainder is a residue of an Estate depending upon a particular Estate, and created together with the same, and passeth forth of the lessor at the time of the particular Estate made. *Co. on Litt. fol. 49. Farmer Law of Convey. pag. 10. Plowd pag. 12.*

In every remainder five things are requisite.

1. That it depend on some particular Estate, as lessee for life, upon condition that if *J. S.* pay the lessor 20 pounds, that then the lessor shall enter upon Tenant for life, and then the remainder over to another, this remainder is void, because by the entry the first livery is made void, and there is no particular Estate continuing, whereof a remainder may depend.

2. That it pass out of the Donor, Grantor, or Lessor, at the time of Creation of

the particular Estate, whereon it must depend, for if the lessor confirm the Estate of his lessee for years, the remainder in fee to this remainder is void, because the estate for years was made before the remainder, and not at the same time of the remainder, vide Dr. and Stud. l. 1. c. 20. fol. 23. b.

2. That it vest during the particular Estate, or at the instant time of the determination thereof; for there may not be a mean time between. For if one make a lease for life, and that a day after the death of Tenant for life it shall remain to J. S. the remainder is void, because it doth not vest at the instant of the determination of the other Estate.

4. That when the particular Estate is Created, there be a remnant of an estate left in the Donor, Grantor, or Lessor, to be given by way of remainder; for if lessee for years grant over his whole Term to J. S. provided that if he die before the Term be out, then the remainder to A. S. this remainder is void, because he left no remnant in him when he granted his whole Term to J. S.

5. That the person or Body, to whom the remainder is limited, be able and of capacity to take the remainder, or else the

15.

remainder shall be void, for if a lease be made of Land for term of life, the remainder to the Maior and Commonalty of C. whereas there is no such Corporation then in being, this remainder is meerly void; albeit the Kings Majesty by his Letters Patents do create such a Corporation during the particular Estate. *Vide Noys Maxims p.* 121 and 124. and his *Compleat Lawyer p.* 78 and 81.

If Lands be given to *I. S.* and his Heirs, the remainder for default of such Heir to *I. D.* and his heirs, this remainder is void, because it doth not depend upon any particular Estate.

But if Lands be given to *I. D.* and his Heirs during the life of *I.N.* the remainder to *I.B.* this remainder is good: for it is not limited to depend upon a Fee simple, but upon a particular Estate for life of *I.B.* discendable. *Noy ubi supra.*

Lease for years, the remainder over in fee, if the Tenant enter before livery and Seilin given to him, it shall be good for his Term, but the remainder is void, because it was not out of the lessor, at the time when the lessee entred and took possession, *Herns Law of Convey, pag.* 4. *Co. Litt.* 49.

If a lease be made to one for life, the remainder to *I. S.* in Fee, who at that time is a Monck professed, afterwards is dereigned and then the Tenant for life dieth, in this case *I. S.* shall not have the remainder because he was not a person able to take it at the time of the remainder appointed. *New Maxims p. 125. and the compleat Lawyer p. 82.*

But if such remainder had been limited to the first begotten Son of *I. S.* it had been good, and should accordingly have vested in such a son afterwards born, during the particular Estate. And note the diversity between a remainder limited by a particular name, and a general name: for where a remainder is limited by a general name, though the person be not *in esse* at the time of the Remainder limited, yet it may be good, as in this case: but where it is limited in particular by name of Baptism and Sirname, it is not good if the person be not *in esse*, or capable at such time. *vide Co. 2. rep. fol. 51.*

The thing whereof a remainder shall be created, must be *in esse* before, and at the time of the appointment and Creation thereof, or else the remainder is void. For if I grant a Rent out of my Land, the Remainder

remainder in Fee this is void, because the rent was not in esse before. *Hermes Law of Convey. p. 5.*

No Remainder may commence upon any repugnancy, or impossibility precedent, nor upon any condition that goeth to the destruction of the particular estate: for conditions always inure in privity.

Therefore if a man make a lease for life rendring rent, and upon condition that if the rent be behind, then the remainder to a stranger in Fee, after the first estate ended, this remainder is void, because conditions inure always in privity; but if a man devise his land to his wife for her life, upon condition that if she marry, then that the land shall remain to *F. M.* in tayl, this is good: for the Construction of this Devise is to make the same condition to be a limitation, and not a condition, & upon a limitation or determination of a particular estate which is taken and not uncertain, a remainder clearly may well depend, *Hermes Law of Convey. p. 6, 7.*

If a lease be made to two, the Remainder over in Fee, after the death of the first of them: this Remainder is void, because the Survivor shall hold place after the

death of the first, and therefore the Remainder is repugnant and void; *Hurl. Ibid.*

If a lease be made for life, the remainder for life; and if the first Tenant for life die, then the remainder over to a stranger in Fee; this is void because it depended upon a repugnancy precedent.

When a particular estate which doth support a Remainder, may determine before the Remainder may commence, then the Remainder doth not vest forthwith, but dependeth in contingency.

As if one make a lease to *J. S.* for life, and after the death of *J. D.* the Remainder to another in Fee, this Remainder dependeth in Contingency; for if *J. S.* die before *J. D.* the particular estate is then determined before the Remainder can commence. So if a lease be made to *A.* for life, and if *B.* die before *A.* that then it shall remain to *C.* for life, this is good upon Contingent (if *A.* survive *B.*) So of a lease made to one for life; the Remainder to the Right heirs of *J. S.* this is also good upon Contingent, that if the lessee for life out-live *J. S.* or else not. And also if a lease be made to *A.* for life, the Remainder to *B.* for life, and if *B.* die before

before *A.* the remainder to *C.* for life this is a good remainder on Contingent, if *A.* survive *B.* or else not, *Vide M.* 17 E. 3. 87. Tr. 1 H. 7. 31. *Perkins sect.* 52. *vide* 29. *Eli. in Borastons case, Co.* 3. *rep. f.* 19. 32 H. 6. *tit. Feoffments and Faits*, 99. *Co. on Lit. f.* 378. *a. Kitchin. f.* 255. *a. Noys Maxims p.* 122. *and his compleat Lawyer, p.* 79. *Heirns Law of convey. p.* 81.

When a Remainder is limited to take effect by doing of an act, which act shall be the determination of the particular estate; yet if the act depend upon a casualty and meer incertainty whether it shall happen or not, there the remainder vesteth not forthwith, but dependeth in contingency; And if a man make a Feoffment to the use of *B.* until *C.* shall come from *Rome* into *England*, and after from such coming to remain over in Fee, this Remainder dependeth in Contingency, for it is uncertain whether ever *C.* will come into *England* or no, and the Remainder ought to commence in possession when the particular estate endeth, as well in Wills as in Grants; for there may not be a mean time between them; And every Remainder Contingent ought to vest either during the particular estate, or *eo instante*, that it determineth,

for if the particular estate be ended, or determined in Deed or in Law before the Contingency happen, then the Remainder is void.

A Confirmation is the conveyance of an estate or right that one hath unto lands or tenements, to another that hath the possession thereof, or some estate therein, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased and inlarged. And though sometimes it may pass by the words *Dedi* or *Concessi*, yet the most proper words are *Confirmasse*, *Ratifecisse*, and *Approbasse*, which do signifie *Rata & firmam facere, & supplere omne Defectum*. And he that makes the Confirmation is called the Confirmer, and he to whom it is made the confirmee. *Co. on Lit.* 295. *Terms of the Law, Confirmation. Bract.* l. 2. c. 38.

There are two kinds of Confirmation viz. a Confirmation implied in law, which is when the law by construction makes a Confirmation of a Deed made to another purpose, and a Confirmation expressed or in Deed, which is when the Act done or Deed made is intended for a Confirmation. And both these are always in writing.

ing. *Pl.Com.* 190 *Co.* 9. *repif.* 142 *and Co. on Litt f.* 295. *Sheppards Touchstone, C.* 18. *p.* 311.

If an Infant make a lease for twenty years, and the lessee doth make a lease to another for all or part of the term, and the Infant at his full age doth confirm this second lease; this is a good Confirmation, and doth perfect the lease, for it is a Rule, That which I may defeat by my Entry, I may confirm by my Deed: But if there be no precedent Estate on which the Confirmation may work, or that the Estate be such an Estate as is meerly void, then is the Confirmation void also, and cannot take effect as a Confirmation. And so it is if he to whom the confirmation is made have nothing in the land: or have an interest in the land and no possession: Or if the confirmer have not such an estate and property in the thing whereof the Confirmation is made, as that he may be thereby enabled to confirm the Estate of the confirmee: in these cases the Confirmation is void, *Co. on Litt. f.* 295 301. *Brall. l.* 2 *f.* 27, 58, 32. *E.* 3. 9. *Rugwales case, Dyer* 109. *Sheppards Touchstone, p.* 313.

A lease for years may be confirmed for a time, or upon condition, or for a piece

of

of the land; but if it be a Frankfeement, it shall enure to the whole absolutely, *New Maxims* 3.78. *Co. on Litt. f.* 297. *and* 3 *rep.* 81. 82.

A Prebend leaseth for seventy years, the Patron Dean and Chapter confirms the Demise aforesaid in form aforesaid for fifty one years and no further, this is a confirmation of the whole term; for when they confirm the demise aforesaid in form aforesaid, the following words for fifty one years are repugnant; but if they had recited the lease, and confirmed the same for fifty one years, this had been good. But by whatsoever words they confirm a lease for life, or gift in tayl for part, this is a confirmation of all because they are intire, 37 *Eli. in C. B. Fowls case*, *Co.* 5. *rep. f.* 81. 27 *Eliz. Prebend of Salisburies case*, *Dyer* 339.

If the Tenant of the land and a stranger joyn in a lease for years by Deed indented of the same land, this is the lease of the tenant only, and confirmation of the stranger; and yet the lease as to the stranger works by conclusion, 11 *H.* 4. 21. 27 *H.* 8. 16. *Co. on Litt. f.* 45. a.

If two several Tenants of several lands joyn in a lease for years by Deed indented these

there be several leases and several confirmations of each of them, but works not by way of conclusion, *Co. Ibid.*

If *A* who is Tenant for life of *C.* and he in the Remainder or Reversion in Fee, make a lease by Deed indented; In this case this is the lease of *A.* during the life of *C.* and the confirmation of him in the remainder; and after the death of *C.* it is the lease of him in the Remainder and the confirmation of *A.* and in this case it works not by way of conclusion, *M. 36 Eliz. in B. R. Treports case, Ch. 6. rep. f. 14. Vide Elis and Chownes case, 44 El. in C. B. rot. 1459. Co. on. Lit. f. 45.*

If Tenant for life, and he in remainder in Fee make a lease by Deed indented, and the lessee be Ejected during the term in the life of Tenant for life, he then must declare in his action of a lease from Tenant for life; and if it be after his death he must then declare of a lease from him in remainder, *Co. on Lit. 45. a. 27 H. 8. f. 13. and vide 7 El. Newdigates case, Dyer, 234. Moores rep. the same case.*

If a Parson lease his Glebe Land for years, If it be confirmed by Patron and Ordinary, it shall bind the Successor, otherwise not; the same Law for a Prebend.

Perkins

Perkins Sect. 35. Co. on Litt. f. 300. Dyer f. Parsons Law's chap. 4. N. 11. Jac. rot. 3861. Spendlows and Barkers case. Hobart. 170 f. 7.

In debt brought for Tithes, the case was, A Parson made a lease of his Rectory for sixty years; which was confirmed by the succeeding Bishop and the succeeding Patron, neither of them being Bishop or Patron at the time of the lease: and here it was resolved by the whole Court that the Confirmation was good. *Tr. 2 Car. in B. R. Sir Robert Banisters case, Cro. 1. pag. 27.*

If Tenant in Tayl lease his Lands for twenty years, rendring rent, and die, and the lessee leases to another for ten years, and the Issue in Tayl accepts the Rent of the second lessee: this doth not confirm the lease, for there is no privity between the second lessee and the issue: but if he accept it of him as Bailiff of the first lessee, it is otherwise: or if the first lessee had leased over all his term in parcel of the land set, and his Assignee pays the rent to the issue in Tail, who accepts it; this affirms the intire lease; for rent upon a lease for years is not apportionable in this case, 32 *H.* 8. *Bro. Acceptance*, 13.

Extin-

Extinguishment is where a Lord of a Mannor, or any other, hath a Rent going out of Land, and he purchaseth the same land, for that he hath such estate in the land as he hath in the Rent, then the rent is extinct and gone, for that a man may not have rent going out of his own land. And when any rent shall be extinct, it behoveth that the rent and the land be in one hand, and that he have as good estate in the land as in the Rent, for if he have estate in the land, but for term of life or years, and hath Fee simple in the rent, then the rent is not extinct, but in suspence for that time, and then after the the term the rent is revived, *Terms of the Law.*

If a man let lands for years or life, reserving Rent, and do enter into any part thereof and take the profits, the whole rent is thereby extinguished, and suspended during such time as the lessor holds out his lessee; nay though after such entry he quit the possession again, yet till such time as the lessee re-enter the rent is gone. *M. 30 Eliz. in C. B. Cibil and Hills case, Leonards rep. 119. Hil. 43. Eliz. in C. B. Howe and Barons case, Goldsboroughs rep. p. 125. pl. 24. Noy's Maxims, p. 70. Herns Law of Convey p. 118. See M. 34. Eliz. in C. B. Gaddards*

Goddards case, Owens rep. f. 10. and M. 35 and 40 Eliz. Rotheram and Greens case, Goldsbor. rep. p. 114. pl. 6. F. 14 E. 4. 4. a.

But if the lessee surrender a part to his lessor, or that the lessor enter into part for a forfeiture or recover a part of the land in waste, or if part of the land be evicted by title Paramount, in all these cases the rent shall be apportioned, so if the lessor grant part of the land to a stranger, the rent shall be apportioned, because it is incident to the reversion, *C. on Lit. f. 148. and Tr. 43 Eliz. rot. 243. West and Lassels case, and Hil. 42 Eliz. in C. B. rot. 108. Moile and Evans case, both vouched there by my Lord Cook.*

If there be two Joyntenants for life, and one lets his part for years, rendring rent and dies; the term shall continue against the Survivor, but the rent is gone. *M. 2 and 3 Eliz. Dyer 187. Finch. l. 1. c. 3. p. 13.*

If a man have a lease for years, as Executor to *A.* and after purchases the Reversion of the land in Fee; here the lease is extinct, and yet it shall be Assets in the hands of the Executor *per Wherewood and Haler, Bro. Extinguishment. 54. Leases 63. Surrendr 32.*

Where

Where the lessor enters upon his lessee and suspends the rent, here he shall not be relieved in equity, because it is against the Law, *Latcher rep. f.* 149.

A Copy holder in Fee took a lease for years of the Manoor, resolved the Copy-hold was extinct for ever, and not only during the lease, *Hide and Newports case, Short rep. f.*

If the lessee be bound to pay his lessor the rent reserved on such lease, and the lessor enters upon all or part of the Land demised, so as the rent is suspended so long as he keeps possession in this case the non-payment of the rent during the time of the suspension thereof is no breach of the condition, *Bro. Obligation, Sheppards Touchstone, p.* 391.

It behoveth such persons as intend to make a re-entry upon their Tenants to make a demand of the rent, at the house upon the land, if there be one, (if the payment be appointed elsewhere by the agreement of the parties) where the lessor himself, or his sufficient Attourney, a little before Sun-set in the presence of two or three sufficient witnesses, shall say, *Here I demand of* R. A. *ten pound, due to me at the Feast of St.* Martin *the Bishop last, for a Messuage*

Meſſuage, Barn, and twenty Acres of Arable land, ten Acres of Meadow, &c. which he holds of me in leaſe by Indenture for ten years, bearing date, &c. and ſo ſtate there upon the land the laſt day that the rent is due to be paid, until it be dark that one cannot ſee to tell the money. But note it may be covenanted between the partyes that the leſſor ſhall re-enter without demand if both parties be ſo pleaſed, Co. Lit. f. 201. b. 40. Aſſ. 11. Noys Maxims, p. 83. Marcher rep. p. 147. pl. 218. Herne Law of Convey. p. 24. Regiſt. Practicale, p. 89.

But note this demand muſt be made at the fore-door of the houſe, and not at the back door for if it be it is not good, becauſe the demand muſt be at the moſt notorious place, and it is not material whether any perſon be there or no: and if the leſſee be in the houſe, and the door open, yet the leſſor need go no further than the fore-door to make his demand, 49 Aſſ. 5. 15 El. Dyer f. 309. Perk. ſect. 838. Co. on Lit. f. 201. b. 153. a. b. Hernes Law of Conv. p. 28.

If there be no houſe, the Demand muſt be made at the moſt notorious place of the land, as at ſome high way leading through the ſame, or at ſome Stile or Gate which is moſt

most frequented; for if it be either at the back-door of the house, or some obscure place in the land, it is a void demand, and the lessor shall not take advantage thereof. for re-entry, or breach of any condition, Dyer, 139. Perkins Sect. 838. 49 Ass. 5. Co. on Lit. 202. a.

See a pretty case in Popham's rep. 58. upon a lease of two Barns, and the lessor demanded at the one, and the lessee tendred at the other, and it was held to be a good tender to save a re-entry.

If the rent be reserved to be paid at any place from off the land, yet it is in Law a rent, and the lessor must demand it at the place appointed, observing the rules aforesaid of the most notorious place. Co. on Lit. 202. a. Pasc. 5. Jac. Knapp and Pier Jewellers case, Bro. [illegible] 1 par. p. 138. Tr. 5 Jac. Ventris and Farmers case, ibid. p. 96. Pasc. 5 Jac. Dean and Chapter of Chichester's case, ibid. p. 138. Tukin and Edmonds case, Moor's rep. 5.

But if the lessee come to the lessor at any place upon the ground at the day of payment, and tender his rent to his lessor, this is good enough, and shall save the condition, and the lessor is bound to receive it, although it were not at the most notorious

notorious place, nor last instant of the day for he may tender it any time of the day though the last instant be the legal time for the demand. But note this tender must be of the whole rent without any deduction for Taxes, or Assessments, or other Charges. *Com. Lit. f.* 202. *a. Perkins Sect.* 837. *Herne Law of Convey. p.* 29 and 30. *Tr.* 23. *Car. R. Regist. Pratticale p.* 327.

Where one lets Lands to another reserving rent at the Feast of St. *Michael* and *Martinmass*, or within fifteen days after and for default of payment to re-enter; In this case it is satisfactory and lawful for the Tenant to tender it the fifteenth day, so long time before Sun set as the money may be told; And at that day and time precisely must the lessor demand it; if he intend to take advantage of the re-entry, for he cannot enter without demand, unless it be covenanted to the contrary as aforesaid, *Co. on Lit. f.* 202. *a.* 21 *H.* 6. 30. *See Plow Com. Hil and Granges case, fol.* 167 *and* 172. *Pasc.* 15 *Jac. rot.* 710 *Cranly and Kingswells case, Hobart's rep.* 207. 43 *Eliz. Maunds case, Co. 7 rep. f.* 28 *b.* 6 *H.* 7. 3. *Herns Law of convey p.* 25, 26. *and* 29.

If a man grant a rent charge to another with

with condition, that if the Rent be behind for ten days after the rent day, that then the lessee his executors, &c. shall forfeit every day 3 s. 4 d. *nomine pene*, until the rent be paid; In this case the rent must be demanded, or otherwise the *Nomine pene* shall never be recovered. *Tr.* 36 *Eliz.* *Fien, and Cholmleys case, Goldsb. rep.* 186. *Tr.* 5. *Jac. in B. R. Sir John Spencer and Sir John Poynes case, Godbolt. rep.* 154. *Hill.* 10. *Jac. rot.* 1793. *C. B.* [illegible] *Grobham and Thornboroughs case, Hoberts rep. fo.* 82. *H.* 13. *Jac. in C. B. rot.* 2009. *Huwel and Ambacks case, Hoberts rep. fo.* 133. 8 *Car. in B. R. Remmington and Kingerbies case, Jones rep.* 4.

If a Lease be made upon condition of non-payment to re-enter, if the Lessor distrain he may not re-enter, but he may accept of the Rent, and yet re-enter; but if he receive the next Rent again, then he cannot re-enter, for that establisheth the Lease. Entry into an Acre in the name of all is good, if the Land lie all in one County, 38 *Eliz. Pennants case, Co.* 3. *rep. fol.* 65. 18 *Eliz. in B. R. Greens case, Leonards rep.* 262. *March and Curtiss case in Mores rep.* and the same case vouched in *Pennants case, Co. on Lit. fol.* 211. *b. Pl.*

b. Pl. Com. fol. 133 Herbert Law of Country, p. 26. 31. & 94.

And if a lease for years be rendring rent with condition that if the lessee assign his Term, then the lessor may enter; and the lessee assigneth, and after the lessor receives the rent of the Assignee, not knowing of the Assignment; here notwithstanding the acceptance of the rent, yet the lessor may re-enter if he please, for the receiving rent of the assignee, he not knowing of the Assignment, bars him not. 38 *Eliz. Pennants case, Co. 5. rep. fol. 85,* and *March* and *Curtiss case,* before: and *Harvey,* and *Oswalds case. Moores rep. fol.*

In a Lease for years, if the lessee covenant that if he, his executors or assigns do alien, that then the lessor shall re-enter; and afterwards the lessee dies and makes his wife executrix, and she takes another husband who aliens; in this case the lessor may re-enter, for the second husband is assignee in Law. 28 *H.8. Dyer* 7.

A lease which is only voidable, and not absolutely void, must be made void by the lessors entry, but if it be absolutely void there needs no entry. 21 *Car. B.R. Registrum practicale, p.* 196.

But note though a lease be made, that it

shall be forfeited, if the rent be not duly paid, as the lease doth provide; In this case, although the rent be not paid according, yet there is no forfeiture to be taken, if there be not an actual and legal demand of the rent. *Hill.18 Jac. rot. 2863. Hemson and Ratcliffs case, and Pasc. 19 Jac. rot. 2048. Hapwurst and Palmers case, Hobarts rep. f.331. Reg. pract. p.152.*

If a lease be made rendring rent on condition that if the rent be not paid within 40 days after such a feast, that then the lessor shall re-enter, and after the rent is unpaid, in this case the condition is broken, but the lessor cannot enter until he have made a legal demand of the rent: and if he die after the condition broken, and before a demand made, his heir shall never take advantage of the breach of this condition. *Dr. and Stud. l.1. c.20. p.35. 13 H.4.17.*

Debt upon a Bond for performance of all Covenants in an Indenture of Lease, where a rent was reserved, it is a good plea in Bar that the lessor made no demand; but if there be an express Covenant for the payment of the rent, then there needs not a demand by the lessor. *P.40 Eliz. rot. 106. in C.B. Specker and Shores case, Moores rep. and Trin. 2 Car.1. rot. 483.*

Ex-

Exchequer, Chapman and Chapman's case Cro. 1 part. fo. 54. Pasc. 14. E. 1.

N. Mortgages his Lands to H. upon condition that if such a sum of money be such a day, that then it shall be lawful the Mortgager to re-enter before the day Mortgager is attainted of Treason, and his Lands come to the Crown, now in case the King need not make a tender the money upon the land, but the Mortgager must demand it at the Exchequer. 43 El. Sir Rowland Hayward's case, Coll. rep. p. 137. pl. 41.

If a lease be made rendring rent at feasts in the year, and if it be behind the space of a month after any of the feasts, it being lawfully demanded, the lessor to distrain: in this Case if rent be arrear by the space of a month after either of the Feasts, the lessor may distrain though he make no demand actually for the distress is a sufficient demand. 16 Jac. in C.B. Kidds and Ammeries case, Hutton's rep 23. See M. 8. Car. in C.B. Lamb and Wolls case, Hutton. 113. 114. and M. 18 Jac. in C.B. Sir Tho. Wentworths case, Hutton 42.

If one lease Lands rendring rent for a year, whensoever the lessor shall demand it

In this case if the lessor come and demand it before the end of the year, his demand upon the land is not good, unless the land be there at the time of the demand, for the time being uncertain when the lessee will demand it, he ought to give the lessee notice of it: And if the lessor come to the lessee in person and demands the rent, yet is it not sufficient; for although notice is to be given to the lessee in person, yet the land is the debtor, and therefore the law ties the lessor to the land, as to the place in which he shall be paid: But if the lessor stay until the end of the year, then the lessee at his peril ought to attend upon the land to pay it, for the end of the year is the time of payment prescribed by Law. *Pasch. 1 Jac. in B. R. Brownlows, 1. part. 135, 136.*

A lease for years was made upon Condition to re-enter for non payment of the rent: A man of evil fame out-lawed in 40 Actions, at the last instant of the day demanded the rent, the lessee asked him what authority he had to receive it, he said he was sent thither by the lessor, but did not shew any warrant for him, or that he was his servant: and all this being sworn before the Justices and the Records of the

Out-lawries produced, the Justices there-
upon dismissed the lessee, and ordered th
the lessor should not enter upon him up
this demand. *Vid. Ab. Moor p. 55. pl.* 1

Debt was brought by the lessor agai
his lessee for years, for a rent behind du
ring the Term, and the Defendant Ple
ed a release made by the lessor six ye
before the rent was arrear, of all deman
and it was adjudged a good Bar. *Tr.*
*Jac. in B.R. Whitton and Byes case, Brow
lows* 1 *par.* 80.

A man made a lease for years, reservi
rent at *Michaelmass*, upon condition th
it were behind a Month after the Fe
that he might enter: the lessee after *Mi-
chaelmass* and before the Month was ou
sent his servant to the lessors house to p
the rent, who paid it to the lessors daug
ter, he not being at home, for her Fathe
use, she having several times before recei
ved it and paid it to her Father, who h
formerly accepted it, but now refu
sed to accept it, and entered for no
payment: and all this appearing to th
Court, and that the lessor had an intent
defraud the lessee of his lease, and th
law doth not favour frauds, therefore it
was adjudged against the lessor. *Hill.* 2

Eliz.

Eliz. in B. R. Crop's case, Godb. 171. pl. 239.

If a man make a lease for years rendring rent at such a Feast, and if it be behind by the space of ten days after, and no distress to be found upon the land: then the lessor to re-enter. In this case if no distress be put upon the land only for one hour, or such a thing, or by night, so the lessor cannot come to distrein, such distress is not sufficient, but the lessor may re-enter. M. 29 Eliz. in B. R. Gall.

Limitation is most commonly taken for a restraint of a certain space of time, within which he that will sue for any lands or hereditaments, or by reason of any Plaint, or upon Account, Trespass, Debt, Detinue, Trover, Replevin, Assault and Battery, &c. he must prove that it is within the time limited by Statute, or otherwise if the other party plead the Statute of limitations to the Action, and it do appear upon the Evidence, that the cause of Action was not within the time there mentioned, then the Plaintiff is barred of his Action. *Vide* 32 H. 8. c. 2. 1 M. Parl. 2. Sess. c. 5. 21 Jac. c. 2 and 16.

Now there is a limitation of time for

the commencing of Actions, so there is also Estates upon limitation, or limited Estates, and the most apt and proper words to make a limitation of estate, are *During*, *Dummodo*, *Dum*, *Quamdiu*, *During*, *Quousque*, *usque*, &c. As if a grant lands to B. to have and to hold to him &c. *Dum* B. go to *Rome*, or until he be promoted to a Benefice, or *dummodo* the lessee pay 20 pounds, or a lease to a woman *Dum sola fuit*, or *Durante viduitate*, these are words of limitation, which determine Estate without entry or claim. *Co. on Lit. fo. 234, 235. Pl. Com. 413. Dy. 300. Sheppards Touchstone pag. 125. Hare Law of Convey. pag. 12 and 13.*

If a leafe be made to *A.* for 41 years if he live so long, and if he die within the aforesaid Term, that then the wife of the aforesaid *A.* shall have it for the residue of the said years, this limitation is void, for if *A.* dies the Term ends, and nothing remains to the wife. *Tr. 8 Eliz. Castle's case. Dyer 252. and vide Pl. Com. 390.*

If a man have an house for 40 years and devise the house to *J. S.* without limiting any Estate, the devisee shall then have the intire Term, for he may not have for life, nor at will, nor for lesser Term of years.

Pase.

Post. 14 *Eliz. Dyer*, 307.

But if a man be possessed of a Term of 30 years, and grant so many of them as shall be behind, at his death; this is void for uncertainty, for he may live till all be out and then nothing remains. *Bro. Leases* 66 and *Grants* 154.

If a lease be made to *A.* and *C.* for their lives, and after their lessor grants the reversion to *C.* for his life, to which grant *A.* attorns, and after by his Deed surrenders to *C.* all his Estate and Interest, and dies: in this case *C.* may enter and hold in common with *B.* 43 *Eliz. Tookers case*, *Co. rep. fo.* 39.

Note there needs no livery and Seisin to be given upon a lease for years, but the lessee may enter when he will: and if there be livery and Seisin upon such a lease, yet the livery is void, and the lessee shall have but an Estate for years: but if there be a remainder granted over to another in Tayl, or in Fee, or for Life, then there must be livery given to the lessee for years, or otherwise nothing passes to him in remainder: and if the lessee enter into the land before livery and enjoy, then the lessor cannot make livery to him after his entry, for he is vest in possession, and livery cannot be

be made to one in possession, *Lit. Tenures fo.* 12. 6. and *Co. on Litt. fo.* 49. *b. Harris Law of Causes, page* 25.

A man makes a lease for years and after makes a Deed of Feoffment of the same Lands, and delivers Seisin, the lessee being in the house at the same time, when the lessor gave Seisin in a close parcel of the premisses, and not knowing nor assenting to it, this livery is void; for though the lessee have the Free-hold and inheritance in him, yet the possession is in the lessee, and livery must be given of the possession: but if the lessee be absent, and hath neither wife nor servants (though he have Cattel) upon the ground, then the livery shall be good. 33 *Eliz.* in *C. B. Bittisworths case, Co. 3. rep. fo.* 31. *Moses rep.* the same case, *Co. on Litt. fo.* 48. *b.*

An Attornment is the agreement of the Tenant, to the grant of the Seigniory, or of a Rent, or the agreement of the Donee in Tayl, or of Tenant for life or years, to a grant of a reversion or remainder made by the Donor or lessor to another. As where he that hath an Estate in reversion or remainder after an Estate for life, or years, doth grant or give the same away; there the Tenant of the land must give his con-

consent to such grant or Gift, or else generally the same is not good, and this yielding of consent is called an Attornment. And it is either Actual or Verbal, or Actual and Verbal both: That which is Actual, is either implied and in Law, or expressed and in Fait, of all which here are some examples following. *Terms de la Ley Attornment, Co. 10 Lib. fol. 309. Pl.*

To the making good of an Attornment, where it is requisite, divers things are required. 1. It must be made by the person that ought to make it: 2. It must be made to the person that ought to take it: 3. It must be made in due time: 4. If it be an express Attornment, the Tenant must have notice of the grant of the reversion, &c. to which he must Attorn; but it is otherwise of an Attornment in Law, for there notice in all cases is not necessary: 5. It must be done in such manner as the Law doth prescribe. Now as to that observ, that it may be made either by words or Deeds without writing, or by Deed or writing, and this is the safest way to do it: and any words written or spoken by the Tenant (after knowledge of the grant of the reversion, &c.) which do import and as-

sent and agreement to it, will make a good attornment in Fait or in Deed; as if he say to the Grantee, I do attorn, or am Tenant to you according to the grant, or I become your Tenant, or I agree to the grant, or I am well content with the grant, or God send you joy of it: these are good express attornment. And if after such knowledge of the grant, the Tenant pay, do, or deliver all, or any part of the Rent, or service, before or at the time when the same is due to the Grantee, though it be but a peny or a farthing, or any other valuable thing in the name of attornment, or in the name of Seisin of the Rent: this is a good express attornment, and it best of all when it is made by words and deed or sign both, for then the witnesses will best remember it. *Coven Lit. fo.* 309, 310, 315. *Pl. Com.* 344. 49 *E.* 3. 15. *Lett. Tenures*, 110.

Where attornment is necessary, it must be made in the life-time of the parties Grantor and Grantee, for if either of them die before the attornment be made, the grant is void, but if the Tenant die before he attorn, he that hath Right may attorn, and it is good: or if the Tenant grant over his Estate, his Assignee may attorn

Return. *Co. on Lit. fo. 315. a. Perkins Rest. 231, 263. Lit. Tenures 1 vol. Co. 4.* [illegible] *rep. fo. 86. rep. f. 57. 9. rep. fo. 34. Tr. 18. 8. 4. f. 10 b. vide Noy's Maxims, pag. 65.*

If a Lease be made of a Reversion to begin at a day to come: in this case the Attornment may be made before or after the day, so it be but made in the life time of the parties as abovesaid. *Co. rep.* [illegible] *fo. 35.*

In those cases following, Attornment in Law or in Deed is absolutely necessary, viz. where one doth make a Lease for life or years to one; and after doth grant the reversion or remainder after the same lease ended to another by Deed in Fee simple, Fee Tayl, or for life, in this case, the lessee for life or years must attorn to the grantee of the reversion, &c. otherwise it is worth nothing. *Co. on Lit. fo. 316. &* [illegible] *rep. fo. 66.*

So where the Lord of a Mannor doth make a Feoffment of his Mannor, In this case the services of the Tenants will not pass without their Attornment. *Co. 6. rep. fo. 68. Dr. and Stud. L. 1. c. 20. fo. 35. a.*

Also if a reversion be granted after an Estate of Tenent by Statute Merchant, Staple, or Elegit, after an Estate that any one hath till Debts be paid, or the like in

these Cases these Tenants must Attorn, or the grant will not be good. *Co. on Lit. fo. 215. b. Bro. Attorn. 48.*

If one make a lease for years of land rendring Rent, and after grants the Reversion to another for years, to begin after the death of the Grantor; here it is needful that the lessee for years in possession do Attorn to make the grant good: But if one make a lease of his land to one for 20 years and after make a lease to another for 20 years, to begin after the ten years be out; this is good enough without Attornment. *Co. 2 rep. fo. 35. Petty Bro. Sect. 198. Co. on Lit. fo. 312.*

If a Lord exchange the services of his Tenant with another for land: in this Case the attornment of the Tenant by whom the services is to be done is necessary to perfect the exchange. *Perkins Sect. 59.*

Where the wife is to Attorn the husband must do it for her, and it shall bind her, whether the Attornment be expressed or implyed. *Co. on Lit. fo. 312.*

Note there is a *Maxim* in Law, that no man shall attorn to any grant of any Seigniory, Rent (service) reversion, or remainder, but he that is immediately Privy to the Grantor: as if there be Lord and

and Tenant, and the Tenant make a lease for life, or a Gift in Tayl of the Land, and after the Lord grants the services to a stranger; In this Case the Tenant himself, and not the lessee for life, or Donee in Tayl must Attorn; but if it had been a Grant of a Rent seck or Rent charge, issuing out of the Land, then the under-Tenant for life, &c. must Attorn. *Co. on Lit. fo. 311. 4.*

If one make a lease for years of Land, the remainder for life, and after the lessor doth grant the reversion to another in this Case either lessee for years, or Tenant for life, may attorn and it is good enough. *Co. on Lit. fo. 316, 317.*

If a man make a lease for life to *J. S.* of Land, and after grant a Rent charge out of it to *J. D.* who after grants over his Rent to another; here the lessor himself and not *J. S.* must Attorn. *Co. on Lit. fo. 312.*

If lessee for life Assign over his Estate upon condition, and then the lessor grants over the reversion; in this case the Assignee and not the lessee must Attorn. *Co. on Lit. fo. 316, 21 H. 6.*

If the Lord of a Manor make a lease of his Manor for life or years, and the Freeholders and others do Attorn to the lessee,

and

and after the Lord grants the Reversion in this Case the lessee for life or years must Attorn, and it shall bind all the Free holders &c. 10 Ed. fo. 311. 21 E. 3. 3. 4.

If many Joyntenants hold by certain services and the Lord granteth the services to a stranger, and one of the Joyntenants Attorneth to the Grant, the same is as good as if all had Attorned: but it is otherwise of a Rent-charge, for there all the Tenants of the Land charged upon the Grant of the said Rent, ought to Attorn to the Grant, for the Ter-Tenant must Attorn, and one of them is not Ter-Tenant. M. 33 Eliz. in B. R. Lancaster and Lucas case, Leonards rep. 234.

A lease is made for life, the remainder to another in Tayl, he in remainder grants over his Estate to another, of which grant Tenant for life having notice, he said to A.B. and C.D. two strangers that he was pleased that the grant was made to, &c. (naming him by his name) for he was his Cozen: and this was held to be a good Attornment, though the words were spoken to those who were meer strangers to the grant: for it sufficeth that the Tenant had notice of the Grant and Assents thereunto, for it is not necessary to Attorn to the

the Grantee himself; If the Tenant had indorsed his hand as a witness to the Deed, knowing what it was, it is as good Attornment. *Co. on Litt. fo. 310 and 2 Rep. fo. 69. and Hilton and Bembridge case, Tr. 11 Car. 1. in B. R. Cro. 1. part. 318.*

A voluntary attornment where it is needful, may be made by an Infant; or one that is deaf and dumb may do it by signs; But one that is not *compos mentis* cannot make an Attornment. *Co. on Litt. fo. 315. M. 9. Jac. in C. B. Countes case, Co. 9. Rep. fo. 84.*

Attornment ought to be certain, for if a reversion be granted for life, and afterwards it is granted to the same Grantee for years, and the Tenant Attorneth to both the grants, this is void for uncertainty. *Vide Co. on Litt. fo. 310. 39 H. 6 3.*

In all Cases for the most part where there is no means provided by Law to compel the Tenant to Attorn, in such Cases their Attornment in Deed or in Law is not necessary, unless there be some special default in the Grantee; And therefore in these Cases following attornment is not necessary, as where one doth grant a Rent, reversion, remainder, service, or Seigniory to another by way of Devise, by a last Will and Testament; or by Letters Patents

Patents from the King, or where such things are granted by matter of Record from a Subject to the King, in such cases there needs no Attornment, *F.N.B.* 121. *M. Co. on Lit.* 314. *and* 327. *and* 6. *rep. f.* 68. 19 *H. f.* 24.

So when the thing granted doth pass by way of use, and vests by force of the Statute of uses: As if one that is seised of land in Fee doth make a lease of it for life or years to *J.S.* and after levieth a fine, or doth Covenant to stand seised of the reversion of this land (or of the land it self which is all one) to the use of another, or doth bargain and sell the reversion in Fee, or for years, in these cases the Tenant need not Attorn, *Co. on Lit. fo.* 321. *Sir Rowland Heywards case, in Cur. wardor.* 32 *Eliz. Co. 8. rep. f.* 33.

So where one doth come to any Rent, Reversion, Remainder, Service, *&c.* by Title, or Seigniory Paramount, as by Escheat, Surrender, or Forfeiture, or by Discent, in all such Cases there needs no Attornment, either to pass the Estate, or make a privity to distrein or bring an action of Debt. Therefore if lessee for life of a Mannor surrendes his estate to the lessor, there needs no Attornment of the

Tenants.

Tenants of the Mannor, to make this estate to pass. Or if the reversion of a Tenant for life be granted to another in Fee, and the Grantee die without heir, so that the reversion Escheat, in this case the Lord may distrein, or bring an action of waste, &c. without any Attornment. So if a reversion descend to an heir from his Ancestor, here it will vest in the heir without Attornment: so if the Conusee of a Statute Merchant, &c. extend a Seigniory or rent for debt, it shall vest in him without attornment. *Co. on Litt. f.* 321. 5 *H.* 7. 18, 19. 30 *H.* 6. *f.* 7.

If one lease for life the Remainder for life, and after the lessor releases all his right in the Land to him in the Remainder for life, this is good enough without the attornment of Tenant for life to him in Remainder, and the release is perfected without it. *Lit. Sect.* 575.

In all cases where the Grant is in the personality there needs no attornment, and therefore in grants of annuities, which do charge the person of the Grantor only, and not his land, there needs no attornment: and in all cases where there is an attornment in Law, there needs none in Deed, *M.* 3 *Jac. in C. B. agreed in Curnocks case.*

Note:

Note where there is no Tenure, Attendance, Remainder, Rent, or Service to be paid or done, there Attornment is not necessary, Therefore if one hath Common of Pasture for a certain number, or Common of Estovers certain, and grants them over to another, they pass without attornment, 31 H8. *Attornment* 39. *Kitchin*, 103. *a.*

An Attornment made after Sun-set is not good, for an attornment is a solemn act, and ought to be done so that notice may be taken of it, which shall not be presumed to be in the night, *M.* 25 *Car.* 1. *in B.R. Regist. Practicale*, *p.* 30.

The Statute of the 21 of H8. *c.* 15. gives liberty and power to salshine all recoveries that shall be had against the Tenant of the Free-hold through their own knavery, intending thereby that their Lessees shall be ousted of their Farms before there terms be out; when as perhaps they paid a great Fine at their income, and so it were an hard case, if they should be ousted from their Farms, upon such Recoveries by Collusion and Fraud, *Co. in Lit. fo.* 46. *a. Reatal recoveries*, 6. *fo.* 371. *a. Wingates Abr. Stat. p.* 405. *Co* 2. *part. Inst. fo* 352.

CHAP.

CHAP. IV.

Several cases of the Dates, Commencements, Habendums, Continuance, and Determinations of Leases.

¶. Leases for life or years are of three natures: some be good in Law, some voidable by entry, and some void without: some *in futuro*, and some *in præsenti*, of all which there are several examples in this small Treatise, *Co. on Lit. fo. 45. b.*

If a Lease be made, dated the third of *May* 1665. to have and to hold for three years from henceforth, or from the making, and it is delivered the twentieth day of *June* after: in this case the day of the delivery must be taken inclusive, and shall be the first day of the term, and the lease shall end the nineteenth day of *June* in the third year after. But if it be to begin *a die datus*, or *a die Confectionis*, then the term shall begin the day after the delivery, and the day it is delivered shall be exclusive: and so note the diversity, *Co. on Lit. f. 46. b. 37 in Eliz. C. B. Clayton's case. Co. 5 rep. fo. 1. and f. 93. Barwicke's case, 35 Eliz. in the*

the Exchequer, Noys Maxims p. 66. Herns Law of convey. p. 14. 15. 12 Eliz. Dyer 286. and 14 Eliz. Dyer 307. M. 10 Car. 1. B.R. Bull and Watts Ca. Cro. 1.

No leafe to be made bearing date the firſt of *January*, 17 *Car.* 2. To have and hold for a certain term of years, from the day of the Indenture aforeſaid, and is delivered the the ſame day, here the day ſhall be taken inclusive: For the day is the time of the delivery, and it differs from the time, or day of the date, as in the laſt caſe before mentioned, *H. 13 Jac. in B.R. Osborne and Riders caſe, Cro. 2. par. 135.*

If an Indenture of leaſe bear date the 30 of *February*, or 40 of *March*, which is impoſſible, in this caſe if the term be limited to begin from the Date, it ſhall then begin from the delivery as if there had been no date at all, *Co. on Litt. f. 46. b. and the Goddards caſe, 26 Eliz. Co. 2. rep. fol. 5. Herns Law of convey. p. 131. and 132.*

If the *Habendum* of a leaſe be for term of twenty one years, without mentioning when it ſhall begin, it ſhall then begin from the delivery, *Coan Litt. f. 46. b. Herns Law of convey. p. 15. and 231.*

Habendum is a word of form in a Deed of

of Conveyance, and its office is to limit the estate, and to explain the premisses; and to give, to enlarge, and to be pertaining to the estate contained in the premisses of the Deed; but it must not be repugnant, nor contrary, nor exclude any of the interest before given in the premisses; for if it doth, the precedent estate given by the premisses shall stand, and the *Habendum* shall be void. As where a Feoffment is made to one and his heirs by the premisses of the Deed, *Habendum* to him and his heirs during the life of *J.S.* or if a Feoffment be made to one and his heirs by the premisses of the Deed, *Habendum* to the Feoffee for term of his life: now these words of limitation during the life of *J.S.* or during the lessees life aforesaid, are void words, because the *Habendum* is repugnant to the premisses, 31 *Eliz. Baldwins* case, Co. 2. *rep. f.* 23. *Noys Max. p.* 55. *Herns Law of convey. p.* 1, 2.

Sometimes the *Habendum* doth control and qualifie the general implication of the estate, which passeth by construction of Law, by the premisses of the Deed; As for example, A lease to two, *Habendum* to one for life, the Remainder to the other for life; this limitation doth alter the general

neral implication of the Joyntenancy which would have been without the *Habendum*, and therefore the *habendum* void, in that the premisses doth make them joyntenants, and the *habendum* would sever the Joynture, and make the one to have all during his life, and the other the whole after him. *Plow. fo.* 133. *Herns Law of convey. p.* 2.

If two Acres be given to two, *habendum* the one Acre to one, and the other Acre to the other, this is a void *habendum*, because it excludeth the Interest of the one in the one Acre, and of the other in the other Acre, whereas the premisses of the Deed hath made them Joyntenant of every parcel, *Herns ubi supra.*

If a Lease be made to *A. habendum* to him for one hundred years, or *habendum* to him and his assigns for one hundred years, these are as good Leases as if the words were *habendum* to *A.* his Executors Administrators and assigns for one hundred years. So if a lease be made to *A. habendum* to him and his heirs for one hundred years, this is a good *habendum*, and the word heirs is void, for it shall go to his Executors, &c. Also where Land is granted

granted to *A. habendum* to him and his successors for one hundred years, this is a good lease and the word Successors void, for it shall go to his Executors, &c. and if a lease be made *habendum* for years, and do not show how many years, this is a good *habendum*, and a lease for two years *tamen quære*, for every lease ought to have a certain beginning and a certain ending. *Sheppards Touchstone, pag. 76.*

A man leaseth *S.* to one for ten years, and *C.* for twenty years and both together to another for forty years, to commence after the end of the said several Demises, here the last lessee after the ten years are ended may enter into *S.* and need not to stay till the other twenty years lease of *C.* be ended: for the joynt words of the parties shall be taken *Reflective*, and the leases shall commence severally upon the several determinations of the two first leases, 31 *and* 32 *Eliz. in B. R. Justice Windams case in a Writ of Error, Co. 5. rep. f. 7. More rep. the same case.*

If lands descend to an heir, he may make a lease thereof before his entry into the same. *Noy's Maxims p. 67. Pl. Com. 137. and 142.*

If a man make a lease to one for ten years,

years, and the next day after make another for twenty years to another man; this second lease shall be good for ten years after the first lease is determined, 26 H. 8. Br. Leases 48. Noy Max. p. 68.

If a lease be made for twenty one years, and after another lease is made to commence from the end and expiration of the said term of years, and afterwards the first lease is surrendred; in this case the second lease shall commence presently upon the surrender: but if it had been made to commence from the end of the said twenty one years, then though there had been a surrender, yet it should not have commenced till the term had been out: and so note the diversity between *Terminus Annorum* and *Tempus Annorum*, Co. on Lit. f. 45. b. Herne's Law of convey. p. 153, Co. 1. rep. f. 154.

If *A.* be seised of lands in Fee, and doth grant to *B.* that when he pays him twenty shillings, that then from that time he shall have and occupy the land for one and twenty years, and after *B.* pays the twenty shillings, this is a good lease for twenty one years from that time, notwithstanding the rule of *Bracton*, that every lease must have a certain beginning, and a certain ending;

ending; for *id certum est quod certum reddi potest. Co. in Litt. 45. b. Plow. 360. 524. Co. 6. rep. f. 35.*

So if a man make a lease to another for so many years as *A.* shall name, this at the beginning is incertain, but when *A.* hath named the years, it is then good for so many years as he names, if he name them in the life-time of the party lessor, *by Say and Fullers case, Plow. Com. f. 273. 14 H. 8. 11. Co. on Litt. fo. 45. b. Nicolls p. 33. b. and Sheppards Touchstone, p. 274.*

If *A.* make a lease of his lands to *B.* for so many years as *B.* hath in the Manor of *D.* and *B.* hath a lease for ten years in it; this is then a good lease to *B.* of the Lands of *A.* for ten years, *Co. on Litt. fo. 45. b.*

If a lease be made to one for so many years as his Executors shall name; this is void for the incertainty, *Co. 1. rep. 155.*

And if a Parson make a lease of his Glebe for so many years as he shall be Parson there, this is a void lease for the incertainty; for *Terminus sine quo incertus, & sicut nihil certius est morte, nil tamen incertius est hora mortis.* But if he make a lease of his Glebe for three years, and so from three years to three years so long as he

he continues Parson: this is a good lease for six years, if he continue Parson so long and void for the remainder, *Co. on Lit. f.* ... *b. Hill. 26 Eliz. rot. 935. in C.B. Plow. Com. f. 27. Sheppards Touchstone p. 275.*

If a lease for years be made of Tithes by Parol or word of mouth, to a stranger it is void: But the Parson may discharge a Parishioner of his Tithes by Parol, and lease the Rectory consisting of Glebe and Tithes together by Parol for years and it shall be good: See the reason hereof, ... *M. 2 Car. B. rot. 179. Bellamy and Balsham's case, in Latches reps. f. 176.*

Two Coparteners in Tail, the husband of one of them, being Tenant by the curtesie joynes with the other in a lease, rendring rent to them two and their heirs; this is no good lease by the *Stat. 32 H. 8.* of Estates Tayl, because it is not reserved to the Donee and his heirs, but to the Tenant by the Curtesie joyntly with the other: and the rent shall be taken strictly as it is reserved by the Lessors, *Tr. 2 Car.* ... *Thomsons case Latches rep. 65.*

If a lease made for three years, and so from three years to three years during the life of *R. A.* this is a good lease for six years, and if the Tenant stay longer he is then

...ten but Tenant at ſufferance, and after entry made by the leſſor, treſpaſs lies againſt him; but if Livery and Seiſin be given upon it, then it is a good leaſe for the life of *A. Noys Max. p.66. Dyer*, 24.

If I make a leaſe to *A.B.* to have and to hold the lands till an hundred pounds be paid, and make no livery of ſeiſin, he hath but an eſtate but only at will, and may be put out at pleaſure: but if livery be given, he hath an eſtate for life, upon condition implied to ceaſe upon the payment of the hundred pounds. 33 *Aſſ. pl.2.* 2 *Mar. 1. Bro. leaſes, 67. Co. on Lit. f. 42. a. Sheppards Touchſtone, p.270.*

A leaſe from year to year, ſo long as both parties pleaſe, it is a good leaſe after entry in any year, for that year, till warning be given to depart, 14 *H.8. 16. Noys Max. p. 66. Bro. Leaſes* 13.22.

If a leaſe be made to *A.* and his Aſſigns, to have and to hold to him during his life, and during the lives of *B.* and *C.* this is a good leaſe for his own life, and the lives of *B.* and *C.* and the Survivor of them. But if a leaſe be made to *I. S.* of Land to have and to hold to him during the time that *A.* and *B.* ſhall be Juſtices of the Kings Bench, or during the time that *A.*

and *B.* shall be of the Inner Temple; in these cases the failer of one doth determine the Estate, 41 *and* 42 *Eliz. B. R. Rosses case, Co.* 5. *Rep. f.* 12. *Herns Law of Canvy.* 12.

If a lease be made to *A.* during the lives of *B.* and *C.* without saying, during the life of the Survivor of them; if one of them die, yet the estate is not determined, but he shall have the Land during the life of the Survivor; or if a lease be made to *A.* and *B.* during their lives, though there be no mention made of the longest liver of them, yet the lease notwithstanding shall continue during the life of the longest liver; But if a lease be made for an hundred years, if *A.* and *B.* live so long; In this case if either of them die, the lease is determined, 34 *Eliz. B. R. Brudnells case, Co.* 5. *rep. f.* 9 *Brownl.* 2 *par. f.* 202. *Sheppards Touchstone, p.* 107. *Hugons and Crawthers case, Tr.* 6 *Jac. Brownl.* 1. *par.* 189.

If a lease be made rendring rent to one and his heirs, or rendring Rent to one or his heirs, it is all one, and either way good: But if a Feoffment be made *Tenendum* to one or his heirs, he hath then an estate but for his life, 43 *Eliz. Mallories case, Co.* 5.

Lit.

Co. 5. fol. 111. Heras Law of convey. p. 108.

If a leafe be made to *B.* only, to have and to hold to him and *C.* for their lives; in this *B.* hath an eſtate for his own life only, and *C.* hath nothing at all, *Sheppards Touchſtone f.* 108.

If a man make a leaſe to commence after the end or determination of a former leaſe for years; and after the firſt leaſe is out, and the ſecond leſſee entreth not, but he in the reverſion enters, and makes a Feoffment, and levieth a Fine with Proclamation, and five years paſs without entry or claim of the ſecond leſſee; here in this caſe the Fine binds him: for the *Stat.* 4 *H.* 7. *c.* 24. doth ſpeak of intereſt, and a Leaſe for years is an intereſt within the meaning of the Statute, 3. *Jac. in C. B. Savins caſe*, Co. 5. *rep. f.* 123.

If an Infant, who is ſeiſed of land held in Soccage, make a leaſe at his Age of fifteen years of the ſame land; this is good, and ſhall bind him, *Co. on Litt.* 45. *b.*

If Tenant in tail make a leaſe for years according to the Statute, rendring rent, and die without iſſue; now as to him in the reverſion the leaſe is void; but if he endow the wife of the land it ſhall be good

against her: or if the Tenant in Tayl die without Iſſue, his wife being with Child and he in Reverſion enters and outs the leſſee, and after the wife is delivered: in this caſe the leaſe is again revived, although it were once void by the entry of him in reverſion. So if Tenant in Fee ſimple take a wife, and then make a leaſe for years and dieth, and the wife is endowed of the ſame, in this caſe ſhe may avoid the leaſe, but after her death it ſhall be in force again againſt the heir. So note a leaſe may ceaſe for a time, and revive again, 10 Ed. 26. 34 Aſſ. 15. 23 E. 3. Dower. 30. Co. 8 Lin. f. 46. a. Sheppards Touchſtone, pag. 275.

If an husband have a term of years in right of his wife, if ſhe die it remains to him; but if ſhe ſurvive him it remains to her, without he diſpoſe of it in his life time, and his Executors ſhall not have it. Pl. Com. 419. M. 26, 27. Eliz. adjudged in both Courts, inter Anner and Loddington, and P. 11 Jac. rot. 1515. C. B. Young and Hasford's caſe. Hobarts rep. f. 3. Co. 8 Lin. f. 46. b. and 351. a.

If a man leaſe for life to I. S. and the next day leaſes to W. R. for twenty years; this ſecond leaſe is void, if it be not a grant

of

of a reversion with Attornment; for in Law the Free-hold is more perdurable and worthy than a lease for years; and yet if the lessee for life die within the term, the lease for years is good for the remainder of the years then to come, 37 H. 8. *Bro. Leases 48 to the end.*

If a Feme Copy-holder in Fee take an husband, who makes a lease for years, contrary to the Custom; after the Husbands death this forfeiture shall not bind the Feme and her heirs; but she shall have it again after her husbands death *non obstante* the forfeiture, and so it was adjudged *inter Savery and Smith* in the Exchequer, *Cro. Eliz. 1. par f. 7. Pase. 1 Car. 1.*

If a man be possessed of a term of years in right of his wife, and make a lease thereof to another, for parcel of the term to begin after his death; this shall bind the wife after the husbands death, and the lessee shall have it during his lease, if the wives term last so long, and the Executors of the husband shall have the rent during the lease of the husbands lessee; but if any thing remain of the Term after such lease be out, then the wife shall have it, if the husband made no disposition of it in his life time. *M. 35 Eliz. in B. R. Pephams case f. 5.*

If Tenant in tayl make a voidable lease for years and dieth, his heir in ward to the King or other Lord, the Lord shall avoid this lease; but this avoidance is but during the Interest of the Lord, for the Heir by acceptance afterwards may make it good, 2 *Eliz.* Earl of *Bedfords* case, *Co. 7. rep. fo. 7.*

If a man licence another to enter and occupy his land for seven years, this is a good lease for the same Term in Law; but if one licence another to enter and sow his Lands, this is no lease, but the owner of the Land may reap the Corn if the other sow it, 23 *H. 6. 37. 5 H. 7. 1. 10 E. 4. 4. Brownlows 2 par. 250. Hobarts rep. fo. 35.*

If a man lease for 60 years, and so from 60 years to 60 years, during 100 years, or unill 100 years be ended, this is all the same lease, and good for the Term, *Plowd. com. fo. 272. 29 H. 8. Bro. Leases, 49. Sheppards Touchstone pag. 270.*

A lease made for 1000 days, weeks, or Months, is as good for as long as it continues as a lease for an hundred or a thousand years. *Finch li. 1. c. 5. p. 67. 14 H. 8. f. 13. Co. 8 rep. fo. 72.*

If I say to *J. S.* being in my house, (here

J. S.

T. S. I demise to you my house and land so long as I live, this is a good lease to him for my life, if livery and Seisin be given; *Et sic de similibus. Co. 6. rep. fo. 26. Sheppards Touchstone, pag.* 270.

If a lease be made to me for my life, and for ten years after my death, this is a good lease for life first, if livery and Seisin be given, and then a good lease for ten years after my death, which my Executors shall have; and though no livery and Seisin be given, yet it seems it is a good lease for the 10 years after my death, *Bro. Leases, pl.* 51. *Sheppards Touchstone, pag.* 270.

A man purchased Lands to him and his wife, and their heirs, and afterwards (without his wife) he leases the Lands for 60 years to another, if they two lived so long, then the husband dies, and the question was whether this lease should bind the wife by the 32 *H.* 8. *cap.* 28. she being no party to the Indenture: And *Yelverton, Harvey*, and *Crook* were of opinion that it did bind the wife, *M.* 1 *Car.* 1. *Smith and Tinterfalls case, Cro.* 1. *par. fo.* 15, 16.

If a man have a lease, and dispose of it by his will, and afterward before his death surrenders it, and takes a new lease, and then dieth; here the Executors and not

the Deviſee ſhall have this leaſe, for the ſurrender was a Countermand of his will. *Tr. 30 Eliz. C. B. Aſhbie and Lawrence Goldſbor. rep. pag. 93. and pl. 6.*

A leaſe was made by a man for 80 years if his wife live ſo long; and if ſhe die, that the Son ſhould have the Land for the remainder of the Term: this remainder to the Son was adjudged void; for if the wife die the Term is gone and nothing remains. *Green and Edwards caſe, Abr. Mares Rep. pag. 93. pl. 419. and Price and Almeries caſe pag. 242. pl. 2053.*

If a man have a leaſe for 500 years it is but a Chattel, notwithſtanding the long time, and ſhall go to the Executors. *33 H. 8. pl. 6.*

A leaſe for years though it be never ſo long cannot be entailed, for the nature of a Chattel cannot be turned into an inheritance. *Hil. 23 Car. 1. in B. R. Regiſt. Practicale, pag. 197.*

A leaſe for life or years, and a releaſe amounteth to a Feoffment; As if I let land to a man for life or years, and after I releaſe to him all my right, which I have in the Land, without uſing any other words in the releaſe, then here he hath but only an eſtate for life, but if I releaſe all my

right

right in the Lord to him, to have and to hold to him and his heirs, hereby he hath a fee simple. *Co. Lit. fo.* 207. *a. Finch l.* 1. *c.* 5. *pag.* 67. *Plowd.* 556. *Dyer*, 263.

If one make a lease for 10 years to a man the remainder for 20 years to another, and the remainder for 30 years to another, and he in remainder release all his right to the lessee for ten years in this case he shall then have it for 30 years, for one lease for years cannot drown in another. *Co. on Lit. f.* 273.

If two Joyntenants for life be, and one of them makes a lease for years of his part to commence after his death; here though the lessee never had possession during the others life, yet the surviving Joyntenant shall be bound by this lease, for the lessee hath a present Interest. *Finch l.* 1. *c.* 3. *p.* 97. *Mich.* 3 *Eliz. Dyer*, 187. *Litt.* 59. *b.* 60. *a. Co. on Litt. fo.* 185. *a. and* 186. *a.b. Harbin and Bartons case, Hill.* 45. *Eliz. C. B. Golds. rep. pag.* 189. *pl.* 130 *Moore rep.* the same rule.

But it is otherwise of a grant to have a lease, if the Grantee pay ten pounds before *Midsummer* next, and the Joyntenant which made the grant die before the day: for here is no interest at all but a continual action till the money be paid. *Finch l.* 1. *c.* 3. *pag.* 27, 98. 5 *Eliz. Plow.* 203. *Co.*

on Litt. fo. 184. a. 14 H. 8. 22. Pl. 262. b.

If a man seised of Land in fee simple make a lease of the same to another, to have and to hold the same for Term of life, and do not mention whose life; in this case it shall be taken to be for the lessees own life, for the Act of every man shall be taken most strongly against himself. *Co. on Lit. fo. 42. a. Philips Pr. of Law, pag. 88.*

But if Tenant in Tayl let such a lease without expressing whose life, it shall be taken to be for the life of the lessor, and so if Tenant for life make such a lease it shall be intended for the lessors life. *Co. Lit. fo. 42. a. and 183. b. Finch l. 1. 54. pag. 60.*

If a man let Land for life without saying more, the reversion of the Fee simple is in lessor. *Finch l. 2. c. 3. f. 113.*

If Tenants for life or years of land make a Feoffment in Fee, and give livery, they thereby forfeit their Terms. *Finch l. 2. c. 3. pag. 113. Bro. For. f. 26.*

If two take a lease for their lives, and make partition; either of them dying his part immediately reverts to the Lessor. *Earingtons case, Dyer 67. Cowells Int. pag. 199.*

A

A lease was made to a widow for forty years under this condition only, that if she so long lived sole, and dwelled in the house: the woman continued sole all her life, and dwelt all her time in the said house, and died within the term, and it was adjudged that the term did continue by reason of the insensibility of the words for it is neither condition nor limitation. And if I make a lease for forty years, if the lessee dwell upon the thing let, during the Term, now if he die the lease is determined, for that the point of limitation goeth to all the Term; but if it be a lease for forty years, if the lessee dwell upon the thing let during his life, here if he die the lease continueth, *Hil.* 43 *Eliz.* in *C.B. Sayer and Hardies case, Goldsborough rep. p.* 179. *pl.* 112.

If a lease be made to the husband and wife, yielding a greater Rent than the Land is worth in this case if the husband die within the Term, the wife may wave the occupation of the Land, and so be discharged of the rent: but if the husband over-live the wife and die, his Executors, if they have Assets to pay the Rent to the end of the Term, may not refuse the lease, but if they have not Assets, they may

wave

wise the occupation, and by special pleading discharge themselves, *Dy. and Stud. Ca. 53. f. 120. a. b. Cowels Inst. pag. 197. Brownlow 2 par. 206, 207. Tr. 24 Car. 1. B.R. Regis. practicale pag. 220.*

A Copy-holder in fee surrendred to the Lord of the Manner his Copy-hold Estate, and the Lord made a lease for years of the Manner, and of the Copy-hold, by the name of his tenement called it, & whether by this the Copy-hold was determined or no, was the question, & it was held that it was not, because when the Lord let the Manner, it was included separed thereof, but if he had made a lease for years of the Copy-hold by it self, that had destroyed the copy-hold, for it was then during that time severed from the Manner, and so could never again be demisable by Copy, *M. 14 Car. 1. in B.R. Lee and Rawlinson case, Cro. 1. par. fo. 375.*

If a Copy-holder make a lease for years, which is a forfeiture at the Common-law, and after the Lord makes a Feoffment, or a lease for years of the Freehold of this Copy-hold; in this case the Feoffee or lessee of the Lord shall not take advantage of the forfeiture: for the lease of the Freehold made by the Lord before entry, is an Assent that the lessee of the Copy-holder shall

shall continue his estate, and see it is in nature of an Affirmance and Confirmation of the lease, M. 40 El. in C. B. Penn and Mariots case. Owens rep fo. 63.

Every one who hath a lawful Estate or Interest in a Manor, be it in Fee simple, Fee Tail, Dower, Tenant by the curtesie, Tenant for life, tenant for years, Guardian, Tenant by Statute Merchant, Staple, or Egit, Tenant at will or sufferance; If a Copy-hold escheat or come into their hands during the time, they may regrant it, and it shall bind the Lord, because every one of them is *Dominus pro tempore*, Co. on Lit. fo. 58. 2 6 *E. Clark and Pennyfeathers case*, Co. 4. rep. fo. 23. and M. 30 El *Rouses case*, *Owens rep. fo.* 28, 29.

If a Copy-holder accept of a lease for years of his Copy-hold, by this his Copy-hold estate is determined, 29 *Eli. Lanes case*, Co. 2. rep. fol. 16.

A lease was made to Husband and Wife for years, if they or any issue of their body should so long live: one of them died having no issue, and it was resolved the lease was not determined thereby, for it is to be taken, that if the Husband, or the Wife, or the issue, should live the lease was to continue, *Abr. Moores Rep.*

pag.

pag. 77. Pl. 359. Baldwins and Cooks case.

The custom of a Manner was, that a Copy-holder letting his lands for longer time than a year, that then they should be forfeited. A Copy-holder makes a leaſe for a year, and ſo from year to year, excepting the laſt day of every year. And all the Court were of opinion that it was a forfeiture, for it is but a ſhift to avoid a forfeiture, and in Law this is no avoidance, for it is a certain leaſe for two years excepting two days; and although there be intermiſſion of a day, yet it is not material in this caſe. *M. 10 Jac. in B. R. Lutterell and Weſtons caſe, Cro. 2. par. 308. and Bulſt. 1. par. 215* the ſame caſe, and ſee *Hil. 4 Car. 1. in B. R. Matthews and Whittons caſe, Cro. 1. pa. 169.*

If the fine of Copy-holders of a Mannor upon admittance be uncertain, yet the Lord cannot demand, or exact unreaſonable and exceſſive Fines; and if he do, the Copy-holder may by the Law deny to pay them and it is no forfeiture: and it ſhall be determined before the Judge, upon proof of the value of the Land what fine was reaſonable to be demanded: for, if it ſhould be otherwiſe, great

great part of the Copy-hold should be destroyed at the will of the Lord, by exacting unreasonable fines, *M.* 42. *and* 43 *Eliz. in B.R. Hubbard and Hammonds case, Co. 4. rep. f.* 27. *and P.* 26 *Eliz. Barnham and Higgins case, cited in Latches rep. f.* 14.

If the Lord assess a reasonable fine, and require the Copy-holder to pay it, he is not bound to pay it presently, because he could not know what the Lord would assess, *& nemo tenetur divinare*, and he shall therefore have reasonable time to pay it in, if the Lord limits no time, but it is otherwise of a fine certain, *Co. 4. rep. f.* 27.

Note that no fine is due to the Lord either upon surrender, or descent, until admittance, for that is the cause of the fine; and if after the Tenant deny to pay it (if it be a reasonable fine) it is a forfeiture of his Copy-hold, *Bacon and Flatmans case, and Sands case, so resolved, vide Co. 4. rep. f.* 28.

If a Copy-holder come not to do his Services, although he were often demanded to do them, but still puts off from time to time to do them; although he do not absolutely refuse, yet this deferring is a for-

for feiture. *Pasch. Car. 1. in B. R. Johnson's case, Latches rep. 14.*

The Lord of a Manor affeſſed two years, and a half value of the land according to the rack'd rent, for a fine upon the Grant of a Copy-hold; and for non-payment thereof entered for a forfeiture. And it was held by the Court of Kings Bench that the fine was unreaſonable, and the one year and an half of improved rent was high enough: and therefore the Lords entry for the forfeiture was adjudged unlawful. *Hill. 3 Car. 1. in B. R. Dunn and Collings caſe Cro. car. 142.*

The Lord affeſſed a fine of twelve pounds to be paid by a Copy-holder, and appoints it to be paid at his capital Meſſage of the Manor three months after: and the Copy-holder pretending the fine to be certain (that is to ſay, two years quit rent) offered the ſame at the day of affeſſing the other fine: but at the appointed place for the payment thereof cometh not thither to excuſe his non-payment, nor makes any other refuſal, and it was held to be a forfeiture of his Copy-hold: But if he had come at the day aſſigned him for the payment, and had then tendered the two years quit Rent, being the fine certain according

to

to the custom; though not assessed nor demanded by the Lord: it had not been a forfeiture, *M. 19 Jac. in B. R. Gardner and Newmans case; Cro. 2. par. 617. Latches rep. f. 122.*

If a woman make a lease at Will, reserving rent, and after takes husband, yet the lease at Will continues still; or if a Feme sole, who is lessee at Will, take an husband, yet the lease at Will is not thereby determined, but is still good, *M. 36 and 37 El. in C. B. Hensteads case, Co. 5. rep. f. 10. 3 H. 6. vide Keilways rep. f. 162. and Termes de la Ley, ver. Countermand.*

Also if Husband and Wife make a lease at Will of the wives Land, reserving Rent, and the Husband dieth, yet the lease at Will continueth: and so it is if two make a lease at will to two others, if either one of the lessors or lessees die, yet the lease continues, *Co. on Litt. f. 55. b.*

If Tenant at Will lease for years in his own name, it is a disseisin, and the lessor may have trespass against the grantee of the lessee at Will, *27 H. 6. 9. P. 22 E. 4. f. 5. b. M. 12 E. 4. f. 12. Com. Litt. f. 57. a.*

If a man lease to one at Will, and the lessee dies, the Will is then Determined, *Kitchin 237. a. 21 Ho. f. 41.*

If

If a lay-man who is unlearned, and cannot read, be bound to seal a lease, bond, or other writing to another, in this case he need not do it, without there be first there to read them to him, if he require it, and in such language as he understands. And if it be read amiss to him, or declared contrary to what it is, so as the illiterate man is thereby deceived, as a Bond of twenty pounds is read as of twenty shillings, or a Feoffment of two Acres is read as of one, in such case he may very well plead, That it is not his Deed; but if he request not to have the Writing read, though it be contrary to his intent and meaning, yet it shall bind him if he seal and deliver it, for it was his folly that he did not desire to have it read, 26 *Eliz. Master vase, Co. 2. rep. f. 3. and 26 Eliz. Throughgoods case, Co. 2. rep. f. 9. 14 H. 8. 26. 9 H. 5. 15. and see Hen. Piggots case, Co. 11 rep. f. 27.*

If I let Lands in which are Mines or Trees, I cannot enter or take the Trees or profits of the Mines, but am thereby a Trespasser, unless I reserve such a privilege to my self when I let the Lands, 9 E. 4. *f.* 37. but I may enter into the Lands to see if any waste be done, and am not a trespasser

suffer by such entry; and if the Tenant deny me entrance upon such account I may have an action of the case against him for opposing me, for the law gives me liberty to enter to see if there be waste, and if I be disturbed of my entry and view, the law will not leave me without remedy; and so it was adjudged, *P. 16 Jac. in B. R. Mary Hunt and Downam, Cro. 2. par. 478. Fineb. l. 1. c. 3. p. 57.*

All Feoffments, Gifts, Grants, and Leases made by Duress of Imprisonment are voidable, and that not only by the parties themselves, but by their heirs, and those who have their estates. *Perkins Sect. 18. Co. on Lit. f. 253. b. 14 Ass. pl. 20. Plo. 18. a.*

If a lessee for years do lose his Indenture of demise of the Lands let unto him, yet he shall not lose his term in the Lands let by indenture which is lost, if he can prove any way that there was such a Term let to him by Indenture, and that it is not determined or ended. And so it is of any other estate in land, if the Deed that created the estate be lost, if it can be sufficiently proved that there was such a Deed made, & that such an estate was conveyed by Deed, *Pasc. 1650. in B. R. Regist. Practi. p. 198.*

If

If Tenant for term of years, or any other Tenant be ousted, or if they die, their Executors, or they if living, shall have reasonable time and free liberty to come and fetch away their utensils and other goods out of the lessors house, *Lit. Ten. f.* 15.a.

Note that no man ought to take above two Farm-houses whereunto Lands are belonging either for years, life, or at will, by Indenture, Copy of Court Roll, or otherwise, on pain to forfeit three shillings four pence for every week he takes the profits of them; and these two farms must be in one shire in the same Parish where the Tenant dwells, 25 *H.* 8. *c.* 13. *Pemt. Stat. f.* 507.

CHAP.

CHAP. V.

Of Corn ſown where the Tenant is inſted, or the term determines before it be ripe, who ſhall have it: and alſo of Eſtovers, and Trees blown down, &c.

IF Tenant at will ſow the Land, he ſhall have free liberty to come and cut, and carry away his Corn, although the leſſor put him out before it be ripe, *Co. on Litt. f. 55. a. 1 H. 4. f. 90. Flets l. 2. c. 13.*

But if Tenant for years ſow the land, and his term end before the Corn be ripe, then the leſſor ſhall have it, unleſs it be covenanted between them, that the Tenant ſhall have his way-going Crop, as they call it in *Yorkſhire*: And the reaſon of this is becauſe the Tenant did know when his term would end, and it was his folly that would ſow Corn on the Land, which he knew would not be ripe till after the term were expired, *Co. on Litt. f. 55. a. b. Clerk of Aſſize, p. 60. Lit. Ch. Tenant at Will, Tr. 13 Jac. rot. 3131. in C. B. Grantham*

tham and Hawleys case, Hobarts rep. f. 132. Sheppards Touchstone p. 433.

If lessee at will set Roots, or sow Hemp, or Flax, or any Annual profit, if after they be planted the lessor do oust him, or if the lessee die; the Executors of the lessee, or he if living, notwithstanding shall have that years Crop. But if he plant young Fruit-trees, or young Oaks, Ashes, or Elms, &c. or sow Acorns, and then is outed by the lessor, in this case he shall have none of these, because they yield not present Annual profit, *Co. on Lit. f. 55 b. 10 Ass. pl. 6. Temps. E. 1. fo. 25.*

Every Tenant that hath an estate incertain shall have the Corn sown by him, though he be ousted before it be ripe, *Co. on Lit. f. 55. b. 7 Ass. 19.*

If Tenant for life sow the ground, and die before the Corn be ripe, his Executors shall have it, and Grass if it be cut but not Meadow unmowen, for that is part of the inheritance till it be severed, *10 E. 3. 29. Clerk of Assize, p. 60. Co. on Lit. f. 55. b.*

So if Tenant for life lease for years, and the lessee sowes the ground, and before it be ripe Tenant for life dies, yet notwithstanding

standing the lessee for years shall have the Corn, or his executors if he be dead, &c. *Co. Lit. f. 55. b.*

Tenant for life the Remainder in Fee, Tenant for life leaseth for years, the lessee is ousted by a stranger, and the stranger sows the land, and then Tenant for life dies; in this case it was resolved that the Corn of right belonged to the lessee of Tenant for life, and not to the stranger nor him in remainder, 38 *Eliz. in B. R. in Henry Knivets case, Co. 5. rep. f. 85. Goldsborough rep. p. 143. pl. 60. the same case.*

If *A.* lease land for the life of *B.* and sow the land, and before the Corn be ripe *B.* dies, yet notwithstanding *A.* shall have the Corn: for his estate was determined by the act of God; and the reason why a man which hath an uncertain estate shall have the Corn, is, for that he hath manured the land, and therefore it is reason that he that laboureth should reap the fruits of his labour.

If a man make a lease for life of ground sowed, and before severance the lessee dies, in this case the lessor shall have the Corn, and not the Executors of the lessee for life, for the Corn came not of the manurance

manurance of their Testator. And so if lessee for life sow the Land, and then assign over his Interest, and dies before the Corn be severed, here he in reversion shall have the Corn; and not the assignee of the lessee for life, *Cause qua supra, in Popham and Tanfield. Goldsbor. rep. p.* 144 *and* 145.

If a man by his will devise lands sowed to one for life, and after his decease the remainder to another for life, and the first Tenant enters and dies before severance, and he in Remainder enters; now he shall have the Corn, and not the Executors of the first Tenant for life, *In Gawdie and Tanfield. Goldsborough rep.* 144.

If a man be seised of land in right of his wife, and sow the land and die, his Executors shall have the Corn, but if they be Joyntenants of lands, and the husband soweth the ground and dieth, the wife shall then have it, *Co. in Litt. f.* 55. *b.* 7 *Ass. pl.* 10. 8 *Ass.* 21. *Pacis consultum, p.* 83. *Perkins sect.* 518. *Swinburns Wills, 3 par. sect.* 6. *p.* 163. *Dyer* 316.

And if a woman who is Tenant for life, or in Dower take an Husband, and he sow the land, and before it be ripe she dies, yet the

the husband shall have the corn. *Swinburn, Cowels Int. p.* 141.

And so if the husband let the lands of his wife for years, and the lessee sowes the lands, and before severance the wife dies, yet the lessee shall have the Corn, or his executors if he be dead. The like law of a lease for years, of Tenant by the Curtesie, when Tenant by the Curtesie dies before his lessees Corn is ripe and severed, *Co. lib. par. f.* 37. *b. Perk. Sect.* 513. *and* 514. *Cowels Int. p.* 141.

If a woman who holds land *Durante viduitate sua* sowe the ground, and then takes husband before the Corn be severed, in this case the lessor shall have the Corn: And so if Tenant at Will sow the land, and then will occupy the land no longer, he shall then lose the Corn: and the reason hereof is, because that the determination of their estates grew by their own act, *Co. on Lit. f.* 55. *b.* 14. *Eliz. in B. R. Ulands case, Co.* 5. *Rep. f.* 116. *and Goldsboroughs Rep. p.* 189. *pl.* 136 *the same case, Co.* 2 *par. Inst. fo.*

But if such a Woman who holds land *Durante viduitate sua* lease the same lands to another, and the lessee sows the lands, and then the woman takes husband which

determines her estate, yet notwithstanding the lessee shall have the Corn. So if Tenant for life lease for years, and the lessee sows the lands, then Tenant for life commits a forfeiture, so that his lessor enters, yet the lessee of Tenant for life shall have the Corn; but if Tenant for life sow the land, and then commits a forfeiture, and the lessor enters, here he shall have the Corn, and not Tenant for life, because the determination of his estate grew by his own act, *Goldsborough's rep. p.* 189.

A lease made by the husband of his Wives land in his own name only is void after his death, but if the lessee have sown the land he shall have the Corn, *Max. p.* 70.

If the lessee sow the land, and then surrender his term, the lessor or he to whom the surrender is made, shall have the Corn; so if a man enter for condition broken, he shall have the Corn, and not he that sowed the Corn, for his entry overreacheth the estate of the other. *Goldsb. rep. p.* 189.

If lessee for years sow the lands, and then commits waste, and the lessor recovers the land in an action of waste, he

the

the lessor shall have the Corn sowed; *Tr. 7. H. 6. 35. Perkins Sect. 515. Cowels Int. 142.*

If there be a Land-Lord and Tenant, and the land is recovered by a title paramount against the Land-Lord; in this case if the tenant have sowed the land, he that recovered shall have the Corn, if it be not severed before Judgment, but if a common recovery be had against the Land-Lord in a writ of *Entry en Le post*, or in any other writ, by a false and feined Title, in such case the lessee shall have the Corn. *M. 7. H. 7. 11. Co. on Lit. fol. 142. Perkins Sect. 515.*

If a Mannor be taken in execution upon a Statute Merchant, and he who hath the same in execution doth sow the Land, and then a ward falls to him by reason of the Mannor, which ward is as much worth as the debt doth amount unto, so that he who oweth the Mannor may have a *Scire facias* against the creditor, and have his Mannor again; yet the creditor shall have the Corn, which he had sowed. *Cowels Int. pag. 141. Perkins Sect. 517.*

If an Abator after the death of the Ancestour enter, and sow the Land, and after the right Heir doth enter; in this

case the Heir shall have the Corn. So if disseisor sow the land, and then the disseisee entreth upon him, or recovereth in an Assise before the Corn be severed, in this case disseisee shall have the Corn; as if it were severed before the Entry or recovery, though it remain still upon the land in sheaves or cocks, there the disseisor shall have it, but it is otherwise in the case of Trees severed from the land, for if they be not carried off the land before the disseisors entry he shall then have them, 37 *H.6.* 35. 9 *H.* 7. 17. 28 *H.* 8. *Goldsbor. Rep. pag.* 144. *Perkins Sect.* 519.

If a Widow have land Assigned to her by the Sheriff for her Dower, and the land is sowed with Corn; here she shall have the Corn, *vide Perkins Sect.* 521. 13 *Eliz. Dyer* 316.

Note that the Statute of *Merton cha.* 2. which giveth, *Quod omnes viduæ de cætero possint ligare blada*, &c. as unto this point, is but in affirmance of the common law; for if Tenant in Dower soweth the land which she holdeth in Dower, and dieth before severance, her Executors shall have the Corn, if she do not devise it to another: and so was the law taken in the 4 of

H. 4.

Devise, 6. which was 16 years before the making of the Statute of *Merton*, *Perkins Sect.* 522. *C.* 2 *part Inst.* 83.

If Tenant in tail sow the Land, and give me the corn, and dies before I have severed it from the Land, yet I may afterwards sever the same and take it, for that the Executors of the Tenant in tail should have had it. *Perkins Sect.* 59.

But if Tenant in tail give, or sell to me Tree growing upon the land, and dies before I have cut the Tree, and his issue entereth into the land where the Tree is growing, now I cannot cut the Tree but he may have Trespass against me, but it seems if it were cut in his life time, I may then take it away after his death, but *Quere* of this, for some are now of a contrary opinion. *Kitchin p.* 226. *a. b.* 27 *H.* 8. *fo.* 6. *P.* 18 *E.* 4. *fo.* 6. *a. and Hill.* 18 *E.* 4. *fo.* 21. *b.* in the end, *Perkins Sect.* 58.

If Tenant in Fee simple give or sell me a Tree growing upon his land, and die before I have cut it, yet I may have it after his death if I please. *Perkins Sect.* 58.

Note that to every Tenant for life or years, the Law as incident to his Estate,

giveth him without prevision of the party three kind of Estovers; that is *Housebote*, which is twofold, *viz. Estoverium ædificandi, & ardendi*, that is for repairing the houses, and for burning; then *Ploughbote*, that is to say *Estoverium arandi*, that is for mending his Ploughs, Harrows, Wains, and making Rakes, Forks, &c. for getting his Hay together; and lastly *Haybote*, and that is *Estoverium claudendi*, and that is for repairing and amending his Stack-hay, Gates, Styles, and Hedges; but these Estovers must be reasonable. *Bote* in the *Saxon* Tongue, and Estovers in the *French* Tongue, in this case are all of one signification, that is to have compensation or satisfaction for these purposes. *Bract. li. fo. 222. 231, 232. Fleta, li. 4. cap. 19. 25, 26, 27. F. N. B. 180. 21 H. 6. 46. Co. Part. Inst. fo. 18. 1 E. 4. fo. 3. Terms de la Ley verbum Haybote, verb. Firebote* and *Housebote*, and *Philips pr. of Law, pag. 63.*

These Estovers, the lessee may take without the Assignment of the lessor, unless the lessee be restrained by special Covenant, for *Modus & conventio vincunt Legem, Coun Lit. 41. b.*

Estovers granted to be burnt in such an house.

house shall go to him that hath the house to whatsoever Title, for one is inseparably incident to the other. *Finch li. 1. c. 3. p. 12 Eliz. & 1. 5. H. 7. 1. Perkins Sect. Kitchin 51. a.*

If Tenant for life or years cut down trees, or pull down houses, or suffer them to fall, or that they be blown down or eradicated by violent tempest, the lessor in such cases shall have the Trees, and Timber of the same houses, for the lessee had them only as things annexed to the land, and after they are severed, his interest is then determined. *Co. Antient rep. fo. 62. and 3 Eliz. fo. 61.*

If timber trees be blown down by the wind, the lessor shall have them, for they are parcel of his inheritance, and not the Tenant for life or years, unless it be to repair houses where they are in decay; but if they be dotards without any timber in them, which bear neither leaves nor fruit in Summer, then the Tenant shall have such. *Co. 4. rep. fo. 63. 16 Eliz. Dyer, 332. F. N. B. 59. M. 20 E. 3. waste 32. Abr. Mores rep. pag. 237. pl. 1037. Countess of Cumberland's case.*

Lessee for life, or years, Tenant in Dower, or by the Curtesie, or Tenant in

Tail after the possibility, &c. have only a special interest or property in the Trees, as things annexed to the Lands, so long as they are annexed thereunto; but if they or any other sever the Trees from the land, then their interest is determined, and the lessor may take the trees as things that are parcel of his inheritance, the interest of the lessee being determined. *Co. 4. Rep. fo. 62. Noyes Max. pag. 65.*

If a stranger cut down a tree growing upon the Land of lessee for years, and carry it or the bark thereof away: the lessor at his Election may either have an Action of Trover against the stranger, or an action of waste against the lessee; for the property of the timber is always in the lessor *non obstante* the Statute of *Gloucester*, which gives him his Action of waste; and so was the opinion of *Jones, Whitlock* and *Richardson. Hill. 7. Car. 1.* in *B. R. Berry* and *Heards case, Cro. Rep. 1 par.*

If one have Estovers in certain in ten Acres of wood, and five of them descend to him, he shall have the whole out of the residue. *Critica Juris Ingeniosa, p. 123.*

If a man grant to another Estovers in certain in such a Wood, and afterwards the Grantor makes such waste in the wood

that there is not sufficient store left, out of which the Grantee may take his Estovers: In this case he may have a *Quo Minus* against the Grantor, which is in nature of a *Prohibition* forbidding him to make such waste.

There is also another writ of *Quo Minus* which every Farmer of the King may have out of the Exchequer, against one that is indebted to him, in which writ he doth surmise, that unless the said party pay him his said debt, he is thereby less able to pay the King his Farm. *Terms de la Ley.*

CHAP. VI.

Of Distresses; of what things a Distress may be taken, and how it must be used.

THe word Distress is a *French* word, and in Latin it is called *Districtio*, because the Taker distreineth or pulleth a straight, which we call a pound. *Co. on Lit. sect. 204.*

A distress must be of such a thing whereof a valuable property is in some body, and therefore Doggs, Bucks, Does, Conies, and the like that are *feræ Naturæ*, cannot be distreined, nor an horse when a man or woman is riding on him, nor an Axe in a mans hand cutting of wood, for they are for that time priviledged. *Co. on Lit. fo. 47. a. 14 H. 8. 25. 2 E. 2. Tit. Distresse 6. R. 2. Reform 11. Dr. and Stud. l. 1. c. 5.*

Neither can things which are for the maintenance of Trades, be distreined for Rent; as another mans horse in a Smiths Shop, nor a travellers horse in an Inn for the Rent thereof; nor the materials in a Weavers

Weavers Shop for making of Cloth, nor Cloth or garments in a Taylors Shop, nor sacks of corn or meal in a Mill, for the benefit thereof, nor any thing that the lessee hath distreined for damage Feasant, for it is then in the custody of the Law. *Co. on Litt. fo.47. 7 H. 7. 1. b. 22 E. 4. 49. b. Noyes Max. pag. 43, and 44. Com. Att. p. 114. Ter. de la Ley tit. Distress.*

A distress may not be taken of Oxen of the Plough, nor a Mill stone, though it be raised up to be picked so long as it lies upon the other stone; neither may a man sever horses joyned to a Cart, or distrein Sheep, if there be a sufficient distress besides; but note there must be a sufficient distress at the same time when the Cattel of the Plough are distreined, otherwise the distress is not unlawful, for it matters not what was before or after. 4 H. 7. 8. b. 28 E. 3. 17. *Co. on Litt. fol.* 47. *b.* 51 H. 3. *Stat. de Districtione Scaccar. Brac. li.* 4. *fo.* 217. *Britt. fo.* 35. *and* 153. *Flet. li.* 2. *c.* 42. 14 *H.* 8. *fo.* 29. *A.* 1. 3. 14 *Eliz. Dyer* 312. *Plinc. pag.* 13. *Co.* 3 *Part Inst. fol.* 133.

If a man have right to distrein, yet notwithstanding if he take the Beasts of the Plough when there is other sufficient distress,

ſtreſs, then ſuch diſtreſs is unlawful, and albeit the Tenant after ſuch diſtreſs taken, pay the Rent, and thereby affirm the taking, notwithſtanding this doth not purge the offence againſt the Statute of the 51 *H.* 3. *de Diſtributione Seacarii*, but the Tenant may have his Action againſt the Lord, although he hath made agreement for the thing, for which the diſtreſs was taken. 14 *Eliz. Dyer* 312. *F.N.B.* 2, *E.* 4. *Co.* 4 *part Inſt. f.* 133.

Nothing can be diſtreined of which the Sheriff cannot make a Replevin, or that cannot be reſtored in as good a plight as it was at the time of the diſtreſs taken. *Co. on Lit. f.* 47. 18 *E.* 3. 4. 11 *H.* 7. 14. 21 *H.* 7. 39. *Termes de la Ley tit. Diſtreſs.*

Victuals, or Sheafs or Shocks, or Stocks of Corn cannot be diſtreined, but a Cart, Chariot, or Wain with corn in it may be diſtreined either for Rent or Damage Feſant. 22 *E.* 4. 40. 4. 2 *H.* 4. 13. *Finch l.* 168. 135. *Co. on Lit. f.* 47.

No man may be diſtreined by the Utenſils or Inſtruments of his Trade, as the Axe of a Carpenter, or the Books of a Scholar, neither can Furnaces, Cauldrons, or the like, fixed to the Free-hold, nor

Eats

Iats fixed for a Dyers Pan, although the Lessee may remove them during the term, as the Windows, or Doors of the house whilst they are on the hinges cannot be distreined, but if they be removed from off the Hinges, then they may be distreined, *Co. on Lit. f. 47. b. Finch l. 2. c. 6. p. 135. 30 H. 7. f. 13. 21 H. 7. 26 Ass. 49. 9. Compleat At. p. 124.*

The Lord may not distrein Tables dormant in the house of his Tenant, nor any thing which cannot be attached in an house, *21 H. 7. 26. Kitchin 63.*

The Land-Lord may distrein the Beasts of a stranger that come in by escape into his Tenants ground, for the rent thereof, if they have been there by any space of time, though they have not been levant and couchant on the ground. But if the stranger see his Beasts escape and presently follow them, and before he can drive them out again, the Land-Lord distreins them for his rent, in this case the distress is not lawful, for here the Beasts are always in the owners possession, and in his view, *Reynold and Oakley's case, Brownl. 1. part 170. Haberts rep. f. 265. the same case, 15 Eliz. Dyer 318. Co. on Litt. f. 47. b. 7 H. 7. 1. b. 10 H. 7. 21.*

Eliz

The Lord cannot distrein another mans horse in the house of one amerced, nor the Robe of another in a Taylors house, where the Taylor is amerced, 10 *H.* 7. *B.* 21. *Kitchin* 62. *a.*

The Lord may sell a distress taken for the Amercement in a Court Leet, as the King may sell the distress, because it is a Court of the Kings; But upon a *Distringas* in a Court Baron, though it were the Kings Court, yet the Cattel must not be sold, 3 *H.* 7. *f.* 4. *Kitchin* 61. *b. M.* 8 *Jac.* *in B. R. Gamersal and Walts case, Cro.* 2. *par.* 255.

If a man distrein Goods or Chattels, he may put them where he will, either in Pound Overt, or in a house or close place, but if they rot or take any harm he must answer for them, *Finch l.* 2. *c.* 6. *f.* 137. *Kitchin* 107. *b.* 9 *E.* 4. *f.* 2. *b.*

But if they be living Cattel, he that distreins must put them in a common Pound, or else in some open place where the Owner may come without Trespass to feed them; and if they be not in a common Pound, then notice must be given to the Owner where they are, and if after they die for want of meat it is in the owners default; But if they be in a Pound Covert, that

that is, a close house, or out of the County and die for want of meat, then he that distreined shall be at the loss, *Co. on Litt. f. 47. b. Dr. and Stud. l. 2. c. 27. Fleta l. 2. c. 20. F. N. B. 86. Terms de la Ley. Mr. Dalton's Cons. Just. p. 125.*

Cattel taken Damage Feasant may be impounded in the same ground where they are taken Damage Feasant; but goods or Cattel taken for other things may not, *20 H. 7. f. 39. Kitchin f. 207. a.*

No man may drive a distress out of the County where it is taken, nor out of the Rape, Hundred, Wapentack, or Laith where such distress is taken, unless it be to a Pound Overt within three miles of the same Hundred; but it is said that one may drive the distress as far as he will within the same Hundred where it is taken, so that if the hundred extend twenty miles he may drive the distress so far, but not above three miles out of the same Hundred; or if an Hundred lie in two Counties, if the distress be taken in that part of the Hundred which lies in one of the Counties, the party may drive the distress into the other County as far as the Hundred extends, but not above three miles further. Neither may a distress be divided and impounded

in

in several places, nor above four pence taken for the Fees of impounding one whole distress, on pain of five pounds and treble damages to the party grieved. M. 30 and 31 Eliz. in C. B. Bendlesy and Pilkintons case, Goldsbor. rep. p. 100. pl. 5. and p. 145 pl. 62. Partridge and Naylors cas. Mich. 24 Eliz. Godbolts Rep. 11. Co. 43 Litt. f. 47. b. Marlbridge C. 4 West 1. c. 16. 2 and 3. P. and M. c. 12. Kitch. Tit. Distresses 11. Co. 2 part. Inst. f. 106. Flets l. 2. c. 40.

If a man distreins Beasts Damage Feasant, and put them in a Pound Overt within the same County, according to the Statute, and the owner suffers the Beasts to die for lack of meat; then he that distreined them is at his liberty to take his Action of Trespass. Dr. and Stud. l. 2. c. 27.

If the Owner of the Cattel tender sufficient amends before the distress taken, it makes the distress unlawful, and if he tender after the distress taken, and before impounding, it makes then the detainer unlawful, but tender after impounding comes too late, for then the cause is put to the trial of the Law; if the party that distreined refuse the tender, yet the Owner

may

may not take his Cattel out of the Pound; for if he do, a *Pareo fracto* lieth against him. Note also that tender of amends to the Bailiff, or Servant will not serve, for he cannot deliver the distress once taken, no more than change the Avowry of his Master, or demand rent upon a condition of Re-entry, *Dr. and Stud. l.2. c.27. Kitchin 207.b Co.2 part Inst f. 107.7 E.3,8. b. 30 Ass.38. 43 El. in B. R. Pilkintons case, Co.5. l.f.76. and l.8. f.49. Hil. 9 Jac. in C.B. rot. 1835. Roberts and Youngs case, Brownlows 1 part 173.*

But note after such tender the party that owes the Beasts may sue out a Replevin to have his goods again; and if it appear when they come to tryal to the Jury that the tender was sufficient, then the Owner shall recover damages in the Replevin against him that distreined for detaining the goods; and if on the contrary it appear that the tender was not sufficient, then the Avowant, that is he that distreined, shall have such amends as the Jury shall assess, *Dr. and Stud. l.2. c.27.*

If after such tender of amends for Damage Feasant, the Cattel die in Pound Overt, yet the Owner shall be at the loss, by reason of the wrong done at the beginning,

ginning, and therefore the Owner muſt look to give them meat ſo long as they are in Pound. *Dr. and Stud. l. 2. c. 27. Kitchin 207. b.*

But if the Owner of the Cattel proffers a Replevin to deliver them; and he that diſtreined refuſes it, and will not deliver them; in this caſe if they die after for want of meat, it is at the peril of him that diſtreined, and the Owner ſhall recover damages againſt him in an action upon the Statute, for diſobeying of the Kings Writ. *Dr. and Stud. l. 2. c. 27.*

If I ſend my Servant to take a diſtreſs for a Rent or Service, and he puts it in the Pound, if the owner of the Cattel or a ſtranger take them out, I ſhall have a *Pares fractæ*, for it is my Pound and not my Servants. *Kitchin fol. 208. b. Cro. Eliz. 193.*

If I impound Cattel taken upon a diſtreſs in a Friends Cloſe, with his licence, and the Owner of the Cattel takes them out; in this caſe I ſhall have a *Pares fractæ*, and my friend an Action of Treſpaſs for breaking of his Cloſe. *Finch. l. 2. c. 16. p. 310. F. N. B. 100. Kitchin 208. b.*

Quicquid in excessu actum eſt, lege prohibetur. And by the Statute of *Marlebridge*,

bridge, *Chap.* 4. forbids the Lord to take excessive distresses upon his Tenant for Rent or Services, on pain of being grievously amerced. As for Example, if the Lord distrein two or three oxen for twelve pence, or the like small sum, and the Owner bring a Replevy of the Oxen, and then the Lord Avow, the taking of them for the twelve pence, here of his own shewing he shall make Fine, &c. or the party grieved may have his Action upon the Statute. *F. N. B.* 89. 8 *H.* 4. 16. 22 *H.* 4. 2. *Regist.* 97. *Co.* 2 *par. Inst. fol.* 107.

If the Lord distrein an Ox or an House for a peny, if there were no other distress upon the land holden, then this distress is not excessive, but if there were a Swine or Calf, &c. then the taking of the Oxe or House is excessive, because he might have taken a beast of less value, *Co.* 2 *par. Inst. fo.* 107.

CHAP.

CHAP. VII.

Who may take Distresses, and for what cause, and when, and where.

A Man may distrein of Common right for Rent-Service, Homage, Fealty, Escuage, Suit of Court, &c. or for a rent reserved upon a gift in Tail, lease for life, years, or at will, though there be no clause of distress in the lease, *Co. on Lit. f.* 204. *b.* 205. *a.* 30 *Ass. pl.* 8. 17 *E.* 3. 7. *Co.* 4. *rep. fo.* 73. *Dr. and Stud. l.* 2. *c.* 9.

But for Debt, Accompt, Trespass, Reparations, &c. a man may not distrein, *Dr. and Stud. l.* 2. *c.* 9.

It is a Maxim in Law, that a distress cannot be taken for any Services that are not put into certainty, nor can be reduced to any certainty; for *Id certum est quod certum reddi potest*, and *Oportet quod certa res deducatur in Judicium*, and upon the Avowry damages cannot be recovered for that which neither hath certainty, nor can be reduced to certainty, *Co. on Litt. fo.* 96. *a. Brac. f.* 230 *and* 238. *Brit. f.* 100. 20 *E.* 3. *Avowry* 131. 25 *H.* 6. 37.

And

And yet in some cases there may be a certainty in an incertainty, as a man may hold of his Lord to shear all his Sheep depasturing within the Lords Mannor; and this certain enough, although the Lord hath sometimes a greater number and sometimes a lesse number there, for this incertainty being reduced to the Mannor which is certain, the Lord may therefore distrein for this incertainty: *Et sic de similibus. Co. on Litt. fo. 96. a. 7 E. 3. 38.*

A Distress is inseparably incident to every Service that may be reduced to certainty as aforesaid, *Co. on Lit. fo. 150. b. 151. b.*

A man may not distrein for Rent after the lease is ended, nor out of his Fee, except in some special cases, nor in the night, unless it be for Damage Feasant, *10 E. 3. Avowry 137. 11 H. 7, 5. Co. on Litt. f. 47. b. and 142. a.*

The Executors or Administrators of him which had Fee Farm in Fee, in Fee tail, or for life, may either have an action of Debt against the Tenant that should pay it, or distrein for it; and so may the Husband after the death of his Wife, his Executors or Administrators, and he which

hath

hathcrent for another's life for the Arrearages after his death, 32 H.8. c.37. *Wingates Max. Stat. p.* 407, 408. *Rastal. Tit. rents. Noys Maxims p.* 52. *Co. on Lit. f.* 162. a. *and vide* 29 *Eliz. Ognels case, Co.* 4. *rep. f.* 48.

If I license a man to put his Cattel into my Pasture for a Week, and then I give him notice that they shall stay no longer, and he will not fetch them away, but suffers them to remain still; in this case I may distrein them damage feasant, *Noys Max. p.*43.

If a man take Cattel Damage Feasant, and as he is driving them to the pound, they run into the owners house, who refuses to let them out again, here he that distreins may have a Writ of Rescous against the Owner for so doing, *Co. on Lit. fo.* 161. a. 2 E. 3. *Rescous* 12. *Compl. At. p.*196.

If a man takes a distress of goods, and shews no cause for what, if they be put in a house, the Owner may break the house and take them out *Vide Claytons rep. p.*64. *pl.*114.

If a distress be taken of goods without cause, the Owner may rescue, but if they be impounded, he may not break the pound and take them out, because they are then in

in the Custody of the law. *Com. Lit. f.* 47. *b.* 3 *E.* 3. *f.* 35. 40 *E.* 3. *f.* 33. 4 *E.* 6. *Tit. Distresses*, *F. N. B.* 166. *a.*

If a man distrein Cattel for Damage feasant, and put them in the Pound, and the owner that had Common there meeth fresh suit, and finds the door unlocked, he then may take them out: but if it be locked, he cannot justifie then to take them out. *Co. on Lit. f.* 47. *b.* 3 *E.* 3. *Avowr.* 11. 34 *H.* 6. 18.

If Beasts driven by the high way escape into anothers Corn, he that driveth them is no Trespasser by his entry to fetch them out again. *Dr. and Stud. l.* 1. *c.* 16. *Latches Rep. f.* 13. *Cawel's Inst. p.* 231.

If a man make a Feoffment reserving a rent, he cannot distrein without a Clause of distress in the Deed; and if the Feoffment be not by indenture, the reservation is void in law; like law where a particular estate is made reserving rent, the Remainder over in fee. *Dr. and Stud. l.* 2. *c.* 9. *p.* 74. *a.*

If Tenant for life grant his whole estate reserving a rent, the reservation is void, if it be not by Deed Indented, and without a clause of distress, it is a Rent-Seck, and he cannot distrein. *Dr. and Stud. l.* 2. *c.* 9. *p.* 74. *a.*

For

For an Amercement in a Court-Leet the Lord may distrein in any place within the Precinct of the Leet; but not for an Amercement in a Court-Baron, *Dr. and Stud. l. 2. c. 9.* 10 *H.* 7. *f.* 15. 34 *E.* 3. 19 *E.* 2. *Avowry* 221. 47 *E.* 3. *f.* 12. *Kitchin fo.* 61. *b.*

If a lease *tbe* made for a year to commence at *Michaelmas*, rendring rent at the *Annunciation*, and *Michaelmas*, the lessor may distrein at the *Annunciation*, but not at *Michaelmas*, because the Term is ended, *Co. on Litt. fo.* 47. *b. Dr. and Stud. l.* 2. *c.* 9.

If Tenant for anothers life make a lease for years reserving rent, and *Cestui que vie* dieth in this case it is said in *Dr. and Stud. l.* 2. *c.* 9. that Tenant *pur autre vie* cannot distrein for the Arrearages, because his reversion is determined; but now he is helped by the Statute of 32 *H.* 8. for he may either distrein on the Tenant, or have an action of debt against him, for the Arrearages due before the death of *Cestui que vie.* 32 *H.* 8. *c.* 37. *Wingates Abr. Stat. f.* 408.

If a Town be Amerced, and the neighbours by assent Assess a certain sum upon every Inhabitant, and it is agreed that if it be

be not paid by such a day, certain persons appointed for that purpose shall distrein, such distress is lawful. *Dr. and Stud. l. 2.*

For rent granted upon Eqaley of Partition, or of Dower, the party may distrein, *11 H. 6. 7. Dr. and Stud. l. 2. c. 9.*

For Heriot Service the Lord may distrein, but for Heriot Custom he must sue and not distrein. *8 H. 7. 10. 8 H. 7. 13. 8 E. 3. 7. b. 2. Kitchin 192. 20.*

If a man break the Pound, and take out his goods, he that distreined may have a *Rescous* against the party, and may also take the goods again wheresoever he finds them, and put them in the Pound again. *11 H. 6. 18. Co. on Litt. f. 47. b. Compl. At. p. 192.*

A man distreined for ten pounds due at *Michaelmas* for rent goods which were not of the value of forty shillings, and afterwards distrained for the residue, and it was adjudged that he could not avow; for the distress is not good, and it was his folly that would not take a sufficient distress at the first: But if a man be behind of his rent at several days, and the lessor takes a distress for one day at one time, and for another day at another time, this is

good, *Morse rep. pl.* 26. *But see now* 8 *Ann.* 14. *Car.* 2.

If the Lord distrein the Cattel of his Tenant although nothing be behind, the Tenant for the respect and duty which he oweth to the Lord, and which belongeth to him, shall not have an action of Trespass against him *vi & armis*: But if the Lord command his Bayliff in such case to distrein where nothing is behind, the Tenant shall have an action of Trespass *vi & armis* against the Bayliff, *Hughes gr. Ab.* 1. *par.* 311. *c.* 7. *Co.* 4. *rep. f.* 11.

If there be Lord and Tenant by rent or other Service, if the rent be behind, the Lord may enter into the Tenants house if the door be open, and distrein for the rent or service, notwithstanding that the Tenant holdeth lands in which he may distrein, 38 *H.* 6. 28. *Co.* 5. *rep. f.* 92. *and see* 3 *E.* 3. *Avowry* 256.

If a man seised of Lands in fee maketh a lease for life thereof, and afterwards he granteth a Rent-charge, though the Grantee cannot distrein the Cattel of a stranger who is in possession of the land for the rent, yet if the Grantors Cattel come upon the land he may then distrein them for the rent, *Brownl.* 1. *par. f.* 32.

If

If there be Lord and Tenant, and the Tenant pay the Lord a greater Rent than is due to him, and that voluntarily without coercion of distress, in this case the Lord having gained Seisin may distrein for such Homage or Rent, and the Tenant cannot avoid it upon the Lords Avowry because of the Seisin of the Rent; But in such case he may have his remedy by a writ of Intrusion grant upon the Statute of *Magna Charta*, cap. 10. *F. N. B.* 11. *Co. 2. par. Inst.* 21. *L. Pl. Co.* 94. 242.

But note this Rule holdeth not in the case of a Successor or issue in Tail, for they may avoid such incroachment in an avowry, or if the incroachment be of another nature than the service of that it is gained by Coercion of distress, in such case the Tenant may avoid such Seisin in an Avowry, *Co. par. Inst. fo.* 21. 12 *E. 4. fo.* 7. *b. L.* 2. *Avowry* 202.

A Rent charge was granted for years with a *Nomine pœnæ*, and clause of distress if it were not paid at the day, and the Rent was behind and the years incurred, and it was moved if the Grantee might distrein for the *Nomine pœnæ* the years being incurred and the opinion of the whole Court was that he could not distrein for

the *Nomine pœnæ*, for that did depend on the Rent, and the diſtreſs was gone as to both, *P. 19 Jac. in C. B. Tatter and Prynne's case, Winches rep. fol. 7.*

If an Horſe or Beaſts come into a man's ground as an Eſtray, he may not work them; neither may a man work a diſtreſs for he hath neither property or poſſeſſion *in Jure*; but if a man hath an Horſe, Oxen or Cowes, in pawn, he hath a ſpecial property in them and may work and uſe them in ſuch ſort as the owner may do, *M. 7 Ja. in C. B. More and Corbams caſe, Owen rep. fo. 123. and Hill. 3 Jac. in B. R. rot. Bagshaw and Gerards caſe, Cro. 2. par. f. 147.*

If the Tenant four-ſquare the way with force and Arms, and threaten in ſuch manner that the Lord dares not come to demand or diſtrain for the rent, or if there be no diſtreſs on the ground, nor none ready to pay the rent; then in this caſe the Lord may have a writ of *Novel Diſſeiſin* againſt the Tenant, and recover his rent and Arrearages: and if the rent be behind another time he may have a *Reddiſſeiſin*, and recover double damages; *Co. Lit. 157. b. and 161. b. Fleta, l. 2. c. 12. Nov. Mod. f. 46.* and ſee *29. Aſſ. 49.*

CHAP.

CHAP. VIII.

Rescous, where it shall be Lawfull.

Rescous is an old *French* word coming from *Rescourer* (id est) *Recuperare*, it is to take from, or rescue or recover; and is a taking away or setting at liberty against Law a distress taken, or a person arrested by the Process or course of Law. *Co. on Lit. fo.* 160. *b.*

And all is one to the point of the difference, to rescue the distress after it is taken, or to resist beforehand and withstand the taking; but yet it is no Rescous till the distress be taken. *Co. on Lit. fo.* 160. *Kelway* 20. *6 H.* 6. *Disseisin*, 9. 21 *H.*40. *a. Finch li.* 2. *c.* 16. *pag.* 319. *F. N. B.* 101. *G.* 102. *F.*

If the Lord distrein when there is no Rent Arrear, the Tenant in such case may make Rescous and hinder. 61 *E.* 2. *Rescous* 10. *Co. Rep. fo.* 11.

Or if the Lord come to distrein, and the Tenant tender the Rent to him, and yet notwithstanding the Lord will distrein

then the Tenant may make Reſcous, *Co. Lit. fo. 160. b. 7 E. 4. 24. b.*

If the Lord will diſtrain *Averia Carucæ*, beaſts of the Plough, when there is at the ſame time a ſufficient diſtreſs to be taken beſides; or if the Lord diſtrein any thing that is not diſtrainable, either by the common Law or by any Statute, then the Tenant may make Reſcous. *Cro. Lib. 6. 161. a. Reſtall Tit. Diſtreſſes, 19. Terra Magna Charta fo. 122. b.*

If the Lord come to diſtrain and ſee the Cattel within his fee, and the Tenant or ſome other Perſon, to prevent the Lord to diſtrain, drives the Cattel out of the Fee of the Lord, into the high way or into an others ground, yet may the Lord freſhly follow, and diſtrain the Cattel though it be in the high way, & the tenant cannot make Reſcous; for in Judgment of Law the diſtreſs is taken within his fee, and ſo ſhall the writ of Reſcous ſuppoſe. But if the Lord coming to diſtrain had not the view of the cattel within his fee, though the tenant drive them off purpoſely to prevent the diſtreſs, or if the Cattel of themſelves after the view go out of the fee, or if the Tenant after the Lords view of them, removeth them for any other cauſe than to pre-

prevent the Lord of his diſtreſs: in ſuch caſes the Lord cannot diſtrein out of his fee: if he do the Tenant may reſcue, *Cozens ca. fo. 161. a. Co. 2. par. Inſt. fo. 131 and 132. 7 E. 4. 6. b. Plo. 38. 9 E. 4. 34. b. 16 E. 4. 2. 6 R. 2. Reſcous 11. 45 E. 3. 20, 21. 33 H. 6. 51. Co. 9. rep. fo. 22. Kitchin pag. 52. b. 1 H. 7. fo. 40. F. N. B. 102. Gr. comp. Iſſ. pag. 106. Hughes gr. Ab. pag. 717. c. 1.*

If the Rent be behind and the Lord diſtrein the Cattel in the high way within his fee, the Tenant may make reſcous (except it be in the caſe aforeſaid, upon the Tenants driving out after view) for no man may diſtrein in the high way, except the King and his Officers having ſpecial Authority, *Co. on Litt. fo. 160. and Co. 2. par. Inſt. fol. 132. 17 E. 3. 43. Rastall Tit. Diſtreſſes, 5. Wingates Abr. Stat. pag. 132.*

If the Lord diſtrain out of his fee in Lands not holden of him, the Tenant may make reſcous, unleſs in the caſes aforeſaid, *Co. on Lit, fo. 161. a.*

If a man come to diſtrain for Damage Feſant, and ſee the Beaſts in his ſoil, and the owner chaſes them out on purpoſe before the diſtreſs taken, the owner of the

foyl cannot follow and take them; for if he do, the owner of the Cattle may rescue them: for they must be damage Feasant at the time of the distress taken, and in this case the owner of the foyl is left to his Action of Trespass, *Coun Lit. fo. 161. a. 10 E.4.10.b. 2 E.2. Avowry, 182. Noy's Max. 146. Co. 9. rep. fo. 77.*

If the husband distrein for Rent due to his wife *dum sola fuit*, and rescous be made, he alone may have a writ of Rescous, or at his Election joyn his wife with him in the writ, *Fenner and Plunkets case, Moors rep. fo.*

If rescous be returned without shewing the place where rescous was made, it is void, *Abr. Moors rep. pag. 112. pl. 562.*

If the Tenant lock up his gates, and inclose his grounds so that the Lord cannot come to distrein, this is a disseisin, if the Lord have had actual possession, and the Rent is behind; for the Lord cannot break open the inclosures to take a distress. *Co. on Litt. fo. 161. a. 10 E. 3. 9. 49 E. 3 14 7 E. 3. 3. 11 H. 7. 28. 8 Ass. 18. 10. E. 4. 2.*

CHAP.

CHAP. IX.

Of Replevins, when and where to be sued out.

Replegiare is compounded of *Re* and *Plegiare*, as much as to say to deliver upon Pledges or sureties. *Co. on Lit. fo.* 145. *b.*

Where goods are distreined and impounded, the owner of the goods may have a writ *De Replegiare facias*, whereby the Sheriff is commanded taking pledges of prosecuting to deliver the goods distreined to the owner; and this is by the common Law. *Fleta, li.* 2. *cap.* 40. *Co. on Litt. f.* 145. *b. Glanvil, li.* 12. *cap.* 12.

But the quickest way is to complain to some of the Sheriffs deputies in the County, who keep a Seal for that purpose, and they will grant a Replevin, and must take pledges of prosecuting, and also *Plegii de Retorno habendo*, that is, to deliver the goods again to the party that distreined, if the Action be found against him that Replevieth, and this is by the statute *Westm.* 2. *c.* 2. *Co. on Lit. fol.* 145. *b. Natal. Tit.*

Replevin 2 *Compl. Att.pag.*127. *Finch. li.* 2. *c.*19. *pag.* 317.

If the Sheriff or his Deputy take insufficient pledges, they are no pledges within the Statute; and he shall be charged upon the return if it be awarded. If the return of pledges made by the Sheriff be upon a writ of Replevin directed to him; then in such case if he that Replevieth be *Nonsuit*, &c. and a writ of *retorno habendo* is awarded, upon which the Sheriff returns *Averia elongata*, &c. here the party that distreined shall have a writ to have return of the Beasts of the pledges. But if the deliverance were by plaint made to the Sheriff, without writ, then there will be no such writ granted against the pledges, because in such case no pledges do appear to the Court. And note that if the Sheriff return *Nihil*, when a Writ of return is awarded against the pledges, then he that distrained may have a *Scire Facias* against the Sheriff, *quod reddat ei tot Averia*, or *tot Catalla*; and the same remedy is against a Bayliff of a Franchise or Liberty, *Co.*2 *par. Inst. fo.* 340. *Fleta, lib.* 2. *c.*38. 2 *H.* 6. 15. 8 *E.* 3. 72. 39 *E.* 3. 28. 9 *H.* 6. 42, *and* 48. *Brownlows* 1 *par.* 161.

If

If the writ of replevin abate for matter apparent by misinformation, or other default of the Plaintiff, or he that distreined plead a Plea which the Plaintiff confesseth, so that a *Return habendo* is awarded, in this case if the owner see cause he may Replevy the goods again, but if the Plaintiff be non-suit in the first Replevin, or that a second retorn be awarded to him that distrained, in such cases the owner can have no more replevins, for then the goods shall remain Irreplevisable, and this return Irreplevisable cannot be awarded by Court Baron, nor County Court, nor any Court that is not the Court of the Kings, before his Justices. *C. 2 par. Inst. fol.* 340. *11 E. 2. Retor. des Averr* 31. 10 *E. 2. ibid.* 3. 41 *E. 3. ibid.* 14. 48 *E. 3.* 10 2 *H.* 23. 4. *H. 6.* 8.

Now if after such return Irreplevisable, the owner be minded to have the goods again, then he must sue out a Judicial writ called a *Second deliverance*; and if he be Non-suit in this Writ, or the plea be discontinued, or the Writ abate, or if he prevail not in his suit, then return Irreplevisable shall be granted: and note this writ of *Second deliverance* shall not be granted where the Plaintiff is overthrown by

by Verdict, or Judgment given against him upon a Demurrer in Replevin; for then neither a new Replevin, nor any second deliverance shall be granted, but the retorn shall be irrepleviſable. *Co. 2. par. Inſt. f.* 340. 341. 5 *E.* 2. *Ret. des Aver.* 64. 10 *E.* 2. *ibid.* 5. 8 *R.* 2. 35. 6. *E.* 3. 37.

But if Retorn Irrepleviſable be awarded, the owner may come to the Defendant and offer the arrearages, &c. and if the defendant refuſe then to deliver the diſtreſs, the Plaintiff may have an action of Detinue, and by that means recover them, for they are in nature of a Gage, *Co.* 2. *par. Inſt. f.* 341.

By the Statute of the 1. and 2. *P.* and *M.* *C.* 12. every Sheriff at his firſt County day, or within two months after he receives his Patent, is to depute and proclaim in his Shire Town four Deputies to make Replevins, not dwelling above twelve miles diſtant one from another; and if he fail herein he forfeits five pounds every month they are wanting, to be divided between the King and Proſecutor, *Raſtal Tit. Diſtreſſes* 11. *Wingates Abr. Sta. p.* 133. *Finch l.* 4. *c.* 19. *p.* 318.

When the diſtreſs is taken and impound-

ed.

ed within a Franchise or liberty that hath return of Writs, whether the matter be before the Sheriff by Writ or by Plaint, he ought to make a Warrant to the Bayliff of the liberty to make deliverance; and if he make no answer or return that he will make no deliverance, or the like, then the Sheriff, by force of the Statute of *Marlebridge*, *Chap.* 21. *and Westm.* 2. *Chap.* 17. may enter into the liberty and make deliverance; and if the distress were taken without the liberty, and impounded within the liberty, then the Sheriff may enter and make deliverance, and need not first to make a Warrant to the Bayliff of the liberty, *Co.* 2. *par. Inst. f.* 140, *and* 194. *Fleta*, *l.* 2. *c.* 39. *Regist.* 83. *F. N. B.* 68.

If a distress be carried to a Fort, or Castle, or Park, or other place of strength, and the Sheriff, upon plaint made to him, makes his Warrant to his Bayliff to make deliverance, who returns that he cannot have view of the Cattle to make deliverance, then the Sheriff ought to enquire of that by Inquest of Office, and if it be found that the beasts be not to be had, then he ought to award a *Withernam* to the Bayliff, to take as many of the parties beasts,

beasts that distreined, or as much goods in his keeping, until he make deliverance of the first distress; & if the Sheriff will not do it, then an attachment shall issue against the Sheriff to the Coroners, and after that a distress; and if he grant a *Withernam*, and a *Nihil* is returned upon it, then shall go out an *alias & plures*, and so infinitely; or if the owner of the beast make suit to the Sheriff to go and demand the distress, and he doth so, and it is denied to be delivered, then the Sheriff may take *Posse Comitatus* with him and break the House, Castle, Fortress, Park, or other place of strength, and make deliverance, but he cannot totally demolish the Castle, unless it be upon a suit on the Kings behalf. *Brownl.* 1 *par.* 167. *Co.* 2. *par. Inst. fo.* 193, *and* 194. *Co.* 5. *rep. f.* 92, 93. *Britton* 54. *b. Fleta, l.* 2. *c.* 40. *Rastall Tit. Distresses* 7. *Compl. At. p.* 125.

The Sheriff may take a Plaint upon the Statute of *Marlbridge*, out of his County Court (which he ought to enter in his County Court) and make Replevin presently, for it is against the scope of the Statute, and should be inconvenient for the owner to forbear his Cattel till the County day, *Co. on Litt. f.* 145. *b. and*

Co.

Co. 2 par. Inst. f. 139. F. N. B. 69. 21 E. 4. 68. b.

If he that distreined the beasts sue cause, he may have a Writ of *Recordare*, and so remove the Suit upon the Replevin out of the Sheriffs County Court or other inferiour Court into the Common Pleas Court; and if the Plaintiff declare not, he that distreined may have a *Retorno habendo*, and if he declare not still, then he that distreined shall have a Writ to enquire of Damages, *vide Co. 2 par. Inst. f. 339.*

In a Replevin by Plaint the Sheriff may hold Plea in his County Court, although the value be of twenty pounds or above, by force of the Statute of *Marlebridge*, but in other actions he shall hold plea under forty shillings, *Co. 2 par. Inst. f. 139.*

If a Replevin be depending by Writ out of the Chancery, the Plaintiff or Defendant may remove the Plea by a *Pone*; and if the Plea be depending in the County, the Plaintiff may remove the same without cause, but the Defendant cannot remove the same without cause, which must be inserted in the end of the Writ, *Co. 2 par. Inst. f. 339. Regist. 84. F. N. B. 69.*

If a man by his Deed grant a rent with clause

clause of distress, and grant farther that he shall keep the goods distreined against Gages and Pledges, until the rent be paid, yet shall the Sheriff Replevy the goods distreined, for it is against the nature of such distress to be Irreplevisable, and by such an Intention the Current of Replevins should be overthrown to the hindrance of the Kingdom, *Co. on Litt. f.* 145. *b. Brac. l.* 4. *f.* 233 *a.b.* 31 E. 3. *Gage Deliver.* 5. *Co.* 2. *par. Inst. f.* 140.

If the beasts of divers several men be distreined, they cannot joyn in a Replevin, but every one must have a several Replevin; for in a Replevin it is a good plea to say that the property is to the Plaintiff and to a stranger, and where there be two Plaintiffs that the property is to one of them, *Co. on Litt. f.* 145. *b.* 28 E. 3. 92. 3 H. 4. 12. 34. H. 6. 37.

If a man take a distress in one County and drive it into another, the Owner of the Cattel may sue a Replevin in which County he pleaseth, *Compl. At. p.* 131.

If the Cattel of a Feme sole be taken, and afterwards she taketh an husband, now he alone may sue a Replevin, *Compl. At. p.* 131.

In

In a Replevin if it be of two Cattels, one living, and the other dead, the living shall be first demanded, *Finch l.1. c.3. p. 15.*

If the Plaintiff in a Replevin do not set out the place where the distress was taken as well as the town, his Declaration will be naught, and the Avowant may overthrow him upon a Demurrer, 35 *H. 6. f.* 40. *and Tr.* 10 *Jac. C. B. rot.* 2508 *Read and Hawkes case, Hobarts rep. f.16.*

The Tenant may have a Replevin against the Lord that did wrongfully distrein, though the beasts be come back again to the Owner, because he can have no action of trespass against the Lord, *Finch l. 1.c.3.p.46.F.N.B.69.b.4 H.7.40.11 H.7.10. Compl. At.p.* 131.

A Replevin must be certain in setting forth the number and kinds of the Cattel distreined, or else it is not good, *Tr.*23 *Car. 1. B.R. Regist. Practicale, p.*193.

And note well that it is a general rule, that the Plaintiff in the replevin must have the property of the goods in him at the time of the taking, for if the Defendant (that is, he that distreined) claim property, then the Sheriff cannot upon complaint to him made, grant a Replevin; but in this

this case he that would replevy the goods, must procure a Writ *De proprietate probanda*, directed to the Sheriff to try the property; and if it be found for the Plaintiff, then the Sheriff to make deliverance, and if for the Defendant, then the Sheriff can proceed no further, unless the Plaintiff get a *Replegiari faciat* to the Sheriff: and then although the Defendant claim the property, yet upon the Sheriffs return of the property, &c. it shall notwithstanding proceed in the Court above, where the property shall be put in issue and finally tried, *Coon Lit. f.* 145. *b.* 3 *E.* 3. 74. 6 *H.* 4. *and* 39. 9 *H.* 6. 39. 20 *H.* 6. 19 31 *E.* 3. *Replevin* 35. 31 *H.* 6. *Prop. Probanda* 5. 2 *Eliz. Dyer.* 173. *Sheppards Sur. County Judic. p.* 50, 51, *and* 52.

Note there are two kinds of properties, that is a general property which every absolute owner hath; and a special property, as of goods pledged, or taken to manure ones lands, or the like: and of both these a Replevin doth lie, *Co. on Lit. f.* 145. *b.* 42 *E.* 3. 18. 11 *H.* 4. 17. 7. *H.* 4. 17. 48 *E.* 3. 20. *Sheppards Sur. County Judic p.* 46.

But a man cannot claim property by his Bailiff, or Servant: and the reason is, for that

that if the claim fall out to be false he shall be punished for contempt, which the Lord cannot be unless he make claim himself for *Nemo punitur pro alieno delicto.* 5 *E.* 3. 38. 11 *H.* 4. 4. 17 *E.* 2. *Prop. Probat.* 6. *Co. on Litt. f.* 145. *b.*

But note well that several of these cases upon Replevins, *Returno habendo*, second Deliverance, &c. are but only to shew how the Law formerly of late stood; and some of them are now quite taken away, and many of them much altered by a late Act of Parliament made at *Oxford* in the seventeenth year of our Sovereign Lord King *Charles* the Second: where it is enacted that whensoever any Plaintiff in Replevin shall be *non suit* before the Issue joyned in any suit of Replevin, by plaint or writ lawfully returned, removed, or depending in any of the Kings Courts at *Westminster*, that the Defendant making a suggestion in nature of an Avowry or Cognizance for such rent to ascertain the Court of such cause of distress. Then the Court upon his prayer shall award a writ to the Sheriff of the County where the distress was taken, to enquire by the Oaths of twelve good and lawful men of his Bayliwick, touching the Sum in Arrear at the time

time of such distress taken, and the value of the goods or Cattle distrained: And upon fifteen days notice given to the Plaintiff or his Attorney in Court, of the sitting of such Enquiry, the Sheriff may enquire of the truth of such matters contained in the Writ, by the oath of twelve men, &c. And upon return of the Inquisition, the Defendant (that is he that distreined) shall have Judgment to recover against the Plaintiff the Arrearages of such rent in case the goods or Cattle distreined shall amount unto that value; and in case they shall not amount to that value, then so much as the value of the said goods and Cattle shall amount unto, together with his full costs of Suit, and shall have execution thereupon by *Fieri facias*, or *Elegit*, or otherwise, as the Law shall require. And in case such Plaintiff shall be non-suit after Cognizance or Avowry made, or issue joyned; or if the verdict shall be given against such Plaintiff, then the Jurors that are impanelled or returned to enquire of such issue, shall at the prayer of the defendant enquire concerning the sum of the Arrearages, and the value of the goods or Cattle distreined: And thereupon the Avowant, or he that makes Cognisance,

sance shall have Judgment for such Arrerages, or so much thereof as the goods and cattle amount unto, together with his full costs, and shall have Execution of the same as aforesaid.

And if the Judgment in any of the Courts aforesaid, be given upon Demurrer for the Avowant, or him that maketh Conusance for any Rent, the Court shall at the Prayer of the Defendant Award a Writ to enquire of the value of such distress; and upon the retorn thereof Judgment shall be given for the Avowant, or him that makes Conusance as aforesaid, for the Arrears alleadged to be behind in such Avowry or Conusance, if the goods or Cattel so distrained shall amount to that value: And in case they shall not amount to that value, then for so much as they amount unto, together with his full costs of Suit, and have execution thereof as aforesaid.

And in all cases aforesaid where the distress is not of the value of the rent Arrear, there the party to whom such Arrearages are due, his Executors or Administrators may from time to time distrein again for the residue of the said Arrears;

Arrears; which formerly a man could not do, for he might not distrein twice for one Rent, for it was accounted his folly that he took not a sufficient distress at the first; but now by this new Statute, that and several other Advantages are taken away from the Tenant.

CHAP.

CHAP. X.

Of Avowries, a word or two concerning the same.

AVowry is where one taketh a distress for rent, or other thing, and the owner of the goods sueth out a Replevin, then he that taketh the distress shall justifie in this plea for what cause he took it: and if he took it in his own right he must shew that, and so avow the taking, and that is called his Avowry, *Terms de Ley de verb. Avowry.*

But if he took the distress in or for the right of another, than when he hath shewed the cause he must make Conusance of the taking as Bayliff or Servant to him in whose right he took it, *Terms de Ley.*

The Lord may avow the taking a Distress, as in lands holden of him within his Fee, without naming any person in certain: and this is by the Statute of the 21 *H.* 8. *c.* 9. *Co. on Litt. f.* 269. *b. See Hob. rep. f.* 108. *in Brown and Goldsmiths case.*

But

But by the Common Law they could not do this, but were forced to Avow upon a person in certain, which proved often very prejudicial to the Lords: for by the secret Fines, Recoveries, Grants, and Feoffments, which the Tenants made purposely to defraud their Lords, they thereupon were put from the knowledge of their Tenants, upon whom by order of Law they should make their Avowry; and so to prevent this Inconveniency the said Statute was made.

But the Lord may Avow still by the Common law if he will, and although he do avow by the Statute upon the lands generally, as in Lands, &c. within his Fee or Seigniory, yet nevertheless he must allege Seisin by the hand of some particular Tenant in certain within forty years, *Co. 9 Lit. 269. b. vide M. 6 Jac. Co. 8. Lib. Sir William Fosters case, 32 H. 8. c. 2. Wingates Abr. Stat. p. 295.*

In an Avowry made according to the Statute, every Plaintiff in the Replevin or second deliverance, be he Termor or other, may have ever Answer to the avowry that is sufficient, and also have aid and every other advantage in Law, Disclaimor only excepted: for disclaim he cannot, because the

he Avowry is made upon no person certain. *Read viz. Avowry and Wingate Max. p.* 34.

If the Lord come to distrein, and the Tenant chase his beasts which were within the Lords view out of the land holden, &c. If the Lord freshly follow, and take them, although it be out of his Fee and Seigniory, he may by the Statute avow the taking as in lands holden of him within his Fee and Seigniory, *Co. 9 Lib. f.* 22 *in case de Avowry.*

If there be Lord and Tenant, and the rent is behind for divers years, and the Tenant makes a Feoffment in Fee, if the Lord accept the service or rent of the Feoffee due in his time, he shall lose the Arrearages due in the time of the Feoffor; for after such acceptance he shall not avow upon the feoffor, nor upon the feoffee for the Arrearages in the time of his feoffor: But if the feoffor dieth albeit the Lord accept the rent or service by the hands of the feoffee due in his time, he shall not lose the Arrearges; for now the Law compelleth him to avow upon the feoffee, and that which the Law compelleth him unto shall not prejudice him, *Co. on Litt. f.* 269. *and see Co.* 3. *rep.* 65, 66. *in Penants case.*

In a Replevin the Defendant avowed and shewed that the Dean and Chapter of *Westminster* were seised in *Jure Coronæ* (but shews not of what estate in certain) and being so seised made a lease to the Avowant for, &c. who let part of his term to the Plaintiff, and for Arrears of rent Avowed, and it was held to be no good Plea, and therefore judgment given against the Avowant, *P. 2 Car. 1 Wade and Marsh. case, Latches rep. f. 12.*

A man may distrein and Avow or make Cognizance for a certain sum, as ten shillings *pro certo Leta*, *Pasc. 5 Jac. C. B. Bullens case, Co. 6. rep. f. 77, 78.*

A man may distrein, and avow, or make Conusance for an Amercement imposed upon an Inhabitant in a Court Leet, for refusing to be Constable, *Co. 8. rep. in Griesleis case.*

A man may distrein and avow, or make Conusance for an Heriot, *Talbots case, Co. 8. rep. f. 105.*

A man may distrein and avow, or make Conusance, for an Amercement for not doing Suit to his Court, or Suit at his Mill, *Co. 11. rep. f. 44, 45.*

There are four manner of Avowries:

1. Upon his very Tenant,

2. Upon

2. Upon his very Tenant by the manner, where the Tenant hath but a particular Estate.

3. Upon his Tenant by the manner, where the Lord hath but a particular Estate; and these three are by the Common Law.

4. Upon the matter in the land as within a Fee. And this by the Statute and safest way, *Vide Hissongh's case, 9 Jac. Co. lib.* 135. 136. 9 *Eliz. Dyer,* 257. 20 E. 3. *Venery,* 131.

CHAP. XI.

Of Waste: What shall be Waste in Houses, Gardens, Woods, Pasture, &c. and what not.

IF Tenant for life, or years, in Dower, &c. pull or pull down the Houses, or suffer them to be uncovered, whereby the Spars or Rafters, Planchers or other Timber of the Houses are rotten, this is waste. 34 E 3. *Waste* 143. *vide* 10 *H.* 7. *fo.* 2. *b.* 12 *H.* 4. *fo.* 4. *Co.* 1 *part Inst. fo.* 53. *a. vide Herns Law of convey p.* 91.

If the House be uncovered when the Tenant cometh in, it is no waste in the Tenant, if he suffer the same to fall down, *Co. ubi supra. Hernes Law of Convey. ubi supra.*

But although the House be uncovered and ruinous at the time of the Tenants coming in, yet if he pull it down, it is Waste, unless he do build it again. 40 *Ass. pl.* 22. 23 *H.* 6. 24. 29 *E* 3. 33. *Co. ubi supra. Compl. At. p.* 166. *Hern, ubi supra.*

If Glass-windows (though glased by the Tenant

Tenant himself) be broken down or carried away, it is Waste; for the Glass is part of the House. *Vide Co. 4. f. 63. in Herlakendens case, Swinburn's Wills 3 part Sect. 6. fo. 165. and Hob. ubi supra.*

And so it is of Wainscoat, whether it be fixed to the Walls or Posts of the House with great Nails or little Nails, Screws or Pins, it is all one, if it be fixed to the Free-hold once, it is waste to take it away again. *Co. 1 part Inst. fo. 53. a. vide Keilways fo. 88. and Herlakendens case, ubi supra. 22 H. 6. 18. 22 E. 4. 18. Swinburn, ubi supra. compl. 220. ubi supra.*

The same Law of Benches, Doors, Windows, Furnaces and the like annexed or fixed to the House, either by him in the reversion or the Tenant. *Co. 1 part Inst. fo. 53. a. 10 El. Dyer 272. 42 E. 3 fo. 6. Noys Maxims, pag. 33.*

The raising of a new Frame of a House which was never covered, is no waste 40. *Ass. pl. 22. Bro. waste 127. Kitchin, fol. 222 b.*

The House uncovered by sudden tempest or otherwise, it is no waste in the Tenant, if he let it lie so, till the main Timber be rotten; then he shall be punished in waste, for not repairing it in time. 12 H.

4. fol. 4. *Kitchin, fo.* 241. 38. *Co. ubi supra.* 19 *E.* 3. *Waste* 30. *Hornes Law of Conveyance, pag.* 52.

If the House fall by sudden Tempest, or be burnt by Lightning, or prostrated by Enemies, or the like without any default of the Tenant, or was ruinous at his coming in and fall down, this is no waste. *Co. ubi supra, vide* 32 *Co.* 4. *fo.* 63. *Herlakenden's case. Dy.* 358. 3. 4. 4.

And the Tenant may build the same again with such materials as remain; and with other Timber growing upon the ground, (which he may take) for his habitation; but he must not make the house larger than it was, for if he do, he is punishable in waste. *Co. ubi supra.* 42 *E.* 3. 6. 11 *H.* 4. 32. 22 *H.* 6. 18. *Hornes Law of Conv. p.* 52.

Though there be no Timber growing upon the ground, yet the Tenant at his peril must keep the houses from wasting. *Co. ubi supra.* 44 *E.* 3. 21. 38 *Ass. pl.* 1 *cum Att. pag.* 166. *Hornes Law of Convey. pag.* 31.

If the Tenant build a new house where none was before, it is waste; and if he suffer it to be wasted, it is a new waste. *Co. ubi supra. Kitchin fo.* 242. *a.* 42 *E.* 3. 31. 12 *H.*

11 H. 4. fo. 6. 17 E. 2. waste 118.

If the Tenant either do or suffer waste to be done in the Houses, yet if he repair them before any Action brought, he is clear; but he cannot plead *quod non fecit vastum*, but the special matter. *Co. 2 part Inst. fo. 53. & 40 E. 3. fo. 6. 38 Ass. pl. 1. vide Kitchin, fo. 242. & Herns Law of Conv. p. 51 and 52.*

The pulling down of a Stone-wall or Mud-wall of an House is waste. *Kitchin, ubi supra. 10 H. 7. fol. 2 b. com. Att. pag. 166.*

A waste discovered when the Tenant comes in, is no waste if he suffer it to decay. *Co. ubi supra.*

If the Tenant of a Dove-house, Park, Warren, Vivary, Estangues, &c. do take so many, as such sufficient store be not left as he found when he entred, this is waste; and to suffer the Pale to decay, whereby the Deer are dispersed, is waste. *Brit. f. 134. 5 R. 2. waste 97 Pl. com. 322. Hobarts Rep. fol. 234. Co. ubi supra. Herns Law of Conv. p. 52. C. 2 part Inst. fo. 304.*

If the Tenant suffer the Houses to be wasted, and then sell Timber to repair them, this is a double waste. *F. N. B. 59. k. Kitchin, f. 242. b. Co. 1 part Inst. f. 53. b.*

If a Termor fix a Furnace, and not to the walls nor Posts of the House, if he take it away within his term, it is no waste, for the House is not impaired. 21 *H.* 7. *fo.* 26. *per King ſmel.*

If Tenant in fee fix a Furnace, or ſet in the middle of the House, the Heir ſhall have it, and not the Executors, *Kitchin ubi ſupra.*

If an House fall by a great wind or Tempeſt, the leſſor ſhall have the Timber, for it is no waſte, and the leſſee is not bound to re-edifie it, 34 *E.* 3. *fo. b.* 11. *H.* 4. *f.* 21.

If the Tenant take away a lead or ſtone fixed to the House, it is waſte.

If a Stable be ruinous at the time of the leaſe made and fall, the Tenant may cut down trees to make a new one; but if there were none there before, it is waſte if he cut trees to build one. 11 *H.* 4. *fol.* 32. *Kitchin, fo.* 242 *b.*

The Tenant may cut trees to amend the House and make reparations; but where it is in decay through his own default, there if he cut trees to repair it, is waſte, *Kitchin ubi ſupra. Fitz.* 59 *k.*

It is to be obſerved, that there is waſte, deſtruction and Exile. Waſte properly is in Houſes, Gardens and Timber-trees, (viz. Oak,

Oak, Ash and Elm, and these are Timber in all places) either by cutting of them down, or lopping and topping them, or doing any act whereby the timber may decay. *Co. 1 part Inst. fo. 53 a. vide Herns Law of Convey. pag. 32.*

Also in Countries where timber is scant, and Beeches or the like are converted to building for the habitation of man, or the like, they then are also counted timber, and cutting of them by the Tenant is waste. *Co. ubi supra. Hern ubi supra.* See *Countess Cumberlands case. Moores Abr. pag. 237. pl. 1037.*

If the Tenant cut down timber-trees as is aforesaid, or such as are accounted timber, it is waste; and if he suffer the young germens to be destroyed, this is destruction, and punishable in waste also. 22 *H 6. 12 a. F. N. B. 59. M. Ca. ubi supra.*

If the Tenant cut down under-wood, (as he may by Law) yet if he suffer the young germens to be destroyed, or stub up the same by the roots, so that it can grow no more, this is waste. 20 *E 3. waste 32, 10 H 7. 2. 42 E. 3. 6 b. 5 E 4. 100. 41 E 3. waste 82. 12 E 4. 1. and Co. 1 part Inst. fo. 53 a.*

Cutting down of Willows, Beech, Asp, Maple or the like, standing and growing in the defence and within the view of the House, is waste. 40 *E.* 3. *fo.* 15. *b.* 4 *E.* 6. *Waste, Br.* 136. *Kitchin fo.* 243. *a. Co. ubi supra. Comp. Att. p.* 165. *Herns Law of Com. p.* 52.

Beech of the age of 20 years, nor under 20 years, may not be cut by Tenant for life or years, for it is waste, unless it be in some Countries where there is plenty of timber. *Tempr H.* 8. *Br. waste* 184.

A man cannot assign waste in the cutting of Beeches of the age of 7 or 8 years. 13 *H.* 7. *f.* 21.

Cutting of Hasels which grow not under the great trees, but in a quarter of the Wood by themselves is waste. 40 *E.* 3. *f.* 25 *b.* 10 *H.* 7. *fo.* 2. *F.N.B* 60 *e. Kitchin fo.* 243 *a.*

If there be a Quick-set fence of Whitethorn, and the Tenant stubs it up, or suffers it to be destroyed, it is waste. *Co.* 1 *part Inst. fo.* 53 *a.* 46 *E.* 3. *fo.* 17. 9 *H* 6. *f.* 10. 12 *H.* 8. 1 *Kitchin, fo.* 244 *a.*

The cutting of dead Wood which is dry and hollow, and neither bears Fruit nor Leaves in Summer, is no waste. *Co. ubi supra*, and *Kitchin ubi supra, F.N.B.* 59 *m.* 16 *El. Dyer* 332.

The

The Tenant may take ſufficient Wood to repair the Walls, Pales, Fences, Hedges and Ditches, as he found them; but he may make no new ones but it will be waſte. *Co. 1 part Inſt. fo. 53. b.*

He may alſo take ſufficient Plough-bote, Houſe-bote, and Fire-bote, as is ſhewed before in *Chap. 5. p. 91.*

If the Tenant cut down Trees for reparations and ſell them, and after buyeth them again and imploys them about neceſſary reparations, yet it is waſte by the condition, for he cannot ſell trees, and with the money cover the Houſe. *Co. 1 part Inſt. p. 53. b. Compl. Att. p. 167. Herns Law of Conv. p. 58.*

Burning of the houſe by negligence or miſchance is waſte. *Co. ibid.* and *Horn ubi ſupra.*

A Termor may take Beech, Aſhes and the like, which are well ſeaſonable, and have been uſed to be felled every 10, 16, 14, or 12 years, and it is no waſte, for it is called *Sylva cedua. 4 E. 6. Bro. Waſte 136.*

Cutting of Beeches and ſelling them is waſte; but the Termor may cut them to repair upon the ſame Land, but not to make reparations upon other Lands. *7 H. 6. fo. 40. Kitchin, fo. 243. b.*

Cute-

Cutting Beeches of ten years old seasonable for house-bote, is not waste; but where they are of the age of twenty years, and fit for main timber, that is waste, 11 *H* 6. *f.* 1. *Sed vide* 4 *E* 6. *f.* 136. *Kitchin*, *f.* 243 *a*.

Where Oaks are cut, and the young germens suffered to be eaten with Cattel, so that they will be but shrubs, this is Waste, *Kitchin f.* 243 *b.* 11 *H* 6. *f.* 1. *Com. Att. p.* 167.

One may assign Waste in the cutting of twenty Oaks, and also in their Stocks, to wit in not springing them again; for if they were saved, they would be Timber, and for that they are not saved, it is Waste, 22 *H* 6. *f.* 14. *Kitchin f.* 243 *b.*

A Termor may cut seasonable wood, which is wont to be cut every twenty years or within such time, *F. N. B. f.* 59. *m.*

Cutting of White-thorn is Waste, but not the cutting of Black-thorn, 46 *E* 3. *f.* 17. *Kitchin f.* 244 *a.*

Where there is a Wood in which groweth nothing but Underwood, the Termor cannot cut all; *contra* of under-wood where Ash, Beech, and other principal Trees grow amongst them, for there he may cut all the Under-wood, 4 *E* 6. *Br. Waste* 136.

Where

Where Apple-trees are blown down and after become dead, the Tenant may cut them for Fewel, 7 *H* 6 *f.* 40. *Kitchin, f.* 244 *a.*

Cutting of Apple-trees, though they lie all along on the ground, yet if they bear fruit, it is waste, *Kitchin, ibid.* 44 *E* 3. *f.* 44. *com. Att. p.* 168.

Cutting of Damasin-trees is Waste, 10 *H* 7 *f.* 2.

If the Tenant cut down any of the fruit-trees growing in the Garden or Orchard, it is Waste, 7 *H* 6, 38. 44 *E* 3, 44. *Co.* 1 *part Inst. f.* 53 *a.*

But if such Trees grow in any place of the ground out of the Garden or Orchard, it is no Waste if he cut them, *Co.* 1 *part Inst. f.* 53 *a. Vide Herns Law of Convey. p.* 52.

Digging for Gravel, Lime, Clay, Brick-earth, Stones, or the like, is Waste, *Co. ibid. f. b. F.N.B.* 59 *n. Herns Law of Conv. p.* 53.

And so it is if the Tenant dig for Mines of Metal, Coals, &c. in the Earth, and not open at the time of the lease made, *Herns ibid.* 41 *E* 3. *Waste* 8. *Hobarts rep. f.* 234. *Herns ubi supra.*

But he may dig for Gravel or Clay for

for Reparations of the House, and it is no Waste, *Coubi supra. Com. Art. p. 168. Herne ubi supra.*

It is Waste to suffer a Wall of the Sea to be in decay, so as by the flowing and reflowing of the Sea the Meadow or Marsh is surrounded, whereby the same becomes unprofitable; but if it be suddenly by the rage and violence of the Sea occasioned by some Tempest or the like, without any default of the Tenant, this is no Waste punishable, *Idem ibid. & Bris. f. 168. b. 16 El. in Griffins case. See Abr. Moors rep. p. 29. pl. 365. 6 Eliz. ubi supra. F. N. B. 59. n.*

If the Tenant repair not the Banks or Walls of Rivers or other Waters, whereby his ground is surrounded, and becomes rushy and unprofitable, this is Waste. *Co. ubi supra. 29 H. 8. Dyer 33. 22 H. 6. 4. 10 H. 7. 5. 2. Kitchin, f. 241. b. Abr. Moores rep. Griffiths case.*

To suffer Pasture-ground to be surrounded with water, so that it becomes rushy and nothing worth, or Arable land to be surrounded, so that nothing remains but tough clay, this is Waste, *Kitchin ibid. 20. H. 6. f. 1.*

If the Tenant convert Arable land into

to Wood, or *e converso*, or Meadow into Arable, it is Waste, for it doth not only change the course of his Husbandry, but the proof of his Evidence, *Co. 1 part Inst. f. 53. b. 29 H 8. Dyer 37. Hobarts rep. f. 234. vide Kitchin, f. 241. b. 10 H. 7. 5. a. 44. E 3. 44. & Com. Att. p. 168.*

To suffer Arable land to lie fresh, so that it is full of Thorns, is no Waste, *2 H. 6. f. 11. F. N. B. 59. n.*

If a man lease his lands in which are Mines of Coals, or the like, without mentioning the Mines in the lease, the lessee for such Mines as are open at the time of the lease made may dig lawfully, and take the profits thereof, but he may not dig for any new ones, it is waste, *Co. 1 part Inst. f. 54. b. 17 E 3. 7. 9 H. 6 66. F. N. B. 149. n. and 59. n. vide Hil. 15 Jac. in the Lord Darcy and Aikwithes case. Hobarts rep. f. 234. Herns Law of Conv. p. 54, and 55.*

If there be open Mines, and the Owner make a lease of the land with the Mines therein, this shall extend to the open Mines only, and not any hidden Mines: but if there be no open Mines, and the lease is made of the land together with all Mines therein, in this case the Tenant may dig

dig for them, and enjoy the benefit thereof, otherwise the words should be void, *Co. ubi supra, vide Sander's case, 41 El. in Co. B. Co. 5. l. f. 12. Hirn's Law of Conv. p. 54 and 55.*

If a lease be made to one of Lands, to occupy the same after the best way he can, or to make his best profit of them, yet this shall be intended only to be after such manner as is according to right and law; for in this case the lessee may not plow up Meadow, or pull down Houses, &c. for if he do he shall be punished in waste, *17 E 3. Tit. 101. Kitchin, f. 248 a. Latches rep. f. 137.*

If the lessee make the Villanes or Tenants at Will poor, where they were rich when he came in, whereby they depart from their Farms, this is Exile and punishable, *Co. 1 part Inst. f. 53 b.*

CHAP.

CHAP. XII.

Who are punishable in Waste, and for what Waste, &c.

WAste in *Latin* is called *Vastum, a Vastando* from wasting and depopulating, *Co. 1 part Inst. f.* 52 *b.*

There are two kinds of waste; that is to say, Voluntary or actual waste, and Permissive waste, *Idem f.* 53 *a.*

An action of waste lieth against Tenant by the Courtesie, Tenant for life, for years, or half a year, Tenant in Dower, or Guardian in Chivalry, by him that hath an Estate immediate of Inheritance, for waste or destruction in houses, Gardens, Woods, Trees, Lands, Meadows, &c. or in Exile of men, to the disherison of him in the reversion or remainder, and they shall lose the place wasted, and treble Damages, *Noy's Max. p.* 33. *Co. 1. part Inst. f.* 53. *a.* and 2 *part Inst. f.* 302. *Pl. Com. f.* 467 *b.* 68 *a. Philips Pr. of Law p.* 32. *vide Mag. Chart. ch.* 4. *and Stat. Glouc. ch.* 5. *Rastal Waste* 1, 4, 5 *and Wingate's Abr. Stat. p.* 551, *and*

and 542. 4 H. 9 f. 11. Kitchin, f. 338. 2 Co. 2 part Inst. f. 302.

It doth not lie against Guardian in Socage, but an Action of Account or Trespass, *Co. 2 part Inst. f. 54. 2. Perers Mag. Charta, f. 26. b.*

Waste lieth not against tenant by *Elegit*, Statute-Merchant or the Staple, but an action of account after the debt and Damages levied, *Noy's Maxims p. 33. F. N. B. 59. c. 16 E. 3. Tit. Waste 100. 2 E. 3. Waste 1.*

Neither doth it lie against Tenant at Will; but if such Tenant voluntarily pull down the houses, or cut down timber-trees, &c. in this case the Lord may have an action of trespass against him, *Quare vi & armis, &c.* but for permissive waste the Lord hath no remedy against him, *Co. 2 part Inst. f. 57. 2. 21 H. 6. 38. 48 E. 3. f. 25. 11 H. 6. f. 38. 12 E. 4. f. 8. 21 E. 4. 5. 21 H. 6. f. 43. Kitchin, f. 237. 2. b. Wargrave and Somerset's case, Mich. 29 and 30 El. Goldsb. rep. p. 72 pl. 17.*

Either waste or account will lie against Tenant in Mortgage, for he hath Fee conditional, *Noy's Maxims ubi supra.*

There are five several Writs of waste; two

no at the Common Law, for waste done by Tenant in Dower or the Guardian; and there by the Statute-Law, for waste done by Tenant for life, for years, and Tenant by the courtesie, *Co. 1 part Inst. f.*

If two or more Joyntenants or tenants in common be of a house of Habitation, and the one of them will not repair the house, the other in that case may have a Writ *De reparatione faciendâ. Co. 1 part Inst. f. 200. b. Reg. 163. F.N.B. 127. and 1 part Inst. f. 54. b.*

If the lessor covenant to repair the house, and doth not, in this case the lessee may cut timber growing upon the ground and repair it, though he be not compellable thereunto, and shall not be punished in waste for cutting the wood, 12 *H.8. f. 2. Co. 1 part Inst. f. 54. b. vide Horns Law of Conv. p. 54. Critica Juris ingeniosa, p. 292.*

If a man make a lease of an house and lands, without impeachment of waste for the house, yet may the lessee notwithstanding repair the house with timber growing upon the ground, though he may utterly waste the house if he will, *Coimbi supra, vide Critica Juris ingeniosa p. 292.*

No

No person shall have an action of waste unless he hath the immediate estate of inheritance; but sometimes another shall joyn with him for Conformity: as if a Reversion be granted to two and the Heir of the one, they two shall joyn in an action of waste, *Co. 1 part Inst. f. 53. b. F.N.B. 59. f. 8. R. 2. Wast 147. 27 H. 8. 13.*

And in like sort the surviving Coparcener and the tenant by the Courtesie shall joyn in an action of waste, *Idem Ibid.*

If the Estate-Tail determine, hanging the action of waste, and the Plaintiff become tenant in tail after Possibility of issue extinct, the action of waste is gone, *Cases supra. 2 H 4. 22.*

If the Tenant do waste, and he in the reverlion dieth, the heir shal not have an action of waste for the waste done in the life of the Ancestor, *2 H. 4. Co. ubi supra. Noy's Max. p. 33.*

Nor a Bishop, Master of an Hospital, Parson, &c. in the time of the predecessor, *Co. ubi supra.*

If lessee for years commit waste and die, no action of waste lieth against his Executors or Administrators for waste done before their time, *Idem ibid. 10 E. 4. 1. 49 E 3. 25. 11 E 2. Wast. 115. 2. Mar. 217.*

8 E 2.

E. 2. *Waste.* 1 Co. Co. 2 part Inst. f. 6. 1, 7.

If two Coparceners be of a Reversion, and the one of them dieth, the Aunt and Neece shall joyn in an action of waste, *Dow ibid.*

If lands be given to two and the heirs of one of them, he that hath the Fee shall not have an action of waste upon the Statute of *Glouc.* for that they are Joynt-tenants; but his Heir shall have an action of waste against Tenant for life, *Co.* 1 *part Inst f.* 53. and 200 *b.* 24 *E.* 3, 27. 30 *E.* 3, 3. 8 *H.* 6, *Co.* 2 *part Inst.* on *Stat. Glouc. 5.*

If lessee for life commit waste, and after surrender his estate, and the lessor accepts it, now the lessee is discharged of the waste, *F.N.B.* 36 *b.* 14 *H.* 8. *f.* 11. *Kitchin,* 240 *a. b.*

If a stranger make waste upon the land which one holdeth for life or years, the Termor shall be punished for it, and is put to take his remedy over, *Kitchin, ibid.* 5 *H.* 4. *f.* 3. 3 *H.* 6. *f.* 17 *b.*

But if the lessor himself make waste, the tenant shall not suffer for that waste, *Kitchin, ubi supra.* 5 *H.* 4. *f.* 3.

If the tenant make waste before his Attornment, he shall not be liable to an

action

action for it, *Idem ibid.* 48 E. 3. f. 15. 34 H. 6. f. 7.

If the lessee covenants to leave the houses of the same land to repair the houses and will not, and for lack thereof the lessee will not repair it, but suffers the house to fall; in this case he is punishable for such waste: but if the timber be to be taken out of other lands, and is not delivered, then the Tenant is excusable if he suffers the house to fall, and no action of waste lies against him, 44 E. 3. f. 21. *Kitchin, ubi supra. Idem ibid.*

Note, After the waste done, there is a special regard to be had to the continuance of the reversion in the same estate that it was at the time of the waste done; for if after the waste he grant it over, though he take back the whole estate again, yet is the waste dispunishable; and so it is if he grant the reversion to the use of himself and his wife, and of his Heirs, yet the waste is dispunishable, and so of the like; because the estate of the reversion continues not but is altered, and consequently the action of waste for waste done before which consisteth in privity is gone, *Co. 1 part Inst. f. 53 b.*

A Prohibition of waste did lie against tenant

grant by the Courtesie, tenant in Dower, and Guardian in Chivalry by the Common Law, but not against tenant for life or years, because they came in by the Lessors own Act, and he might have provided that no waste should be done, *Bract. lib. f. 315. 16. Brit. f. 168. Dr. and Stud. lib. 2. ch. 1. 1 H. 4. 3. 10 H. 3. Waste 142. 4 H. 3. Waste 40. Co. ubi supra.*

Tenant by the Courtesie or in Dower can hold of none but the Heir and his Heir by descent; and therefore if they grant over their Estate, and the Grantee doth waste, yet the Action must be brought against themselves for the waste done, and not against the Assigns or Grantees, *Nova Maxima p. 33. Co. ubi supra. F. N. B. 56. e. f. and see Co. 3. l. in Walker's case, and 1. l. in Beaumont's case, Regist. 72. vide Brownlow's 1 part f. 239. Co. 2 part Inst. 301.*

But if the Heir either before the Assignment had granted, or after the Assignment doth grant the Reversion over: in both these cases the Grantee must bring the action of waste against the Assignee, for now the privity is destroyed, *Co. ubi supra.*

In all other cases the action of waste must

must be brought against the parties that commit the waste, (for it is in nature of a Trespass) unless it be in case of a ward; for there if the Guardian doth waste and assign over, the action lieth against the assignee. *Co. 1 part Inst. f. 54. a. 27 E. 4. 8. 26 E. 3. Waste 10. Co. 2 part Inst. fol. 302.*

A Guardian shall not be punished for waste done by a stranger, *Co. ubi supra. 11 H. 4. 3. 3 E. 3. Waste 146. Fleta l. 1. ch. 11.*

But tenant by the Courtesie, in Dower, for Life, Years, &c. shall be punished for waste done by a stranger, and are left to take their remedy over against the stranger as aforesaid, *Idem ibid. F. N. B. 59 a. and 60. g. usq.*

If waste be made by strange enemies or sudden tempest, the termor is disponishable for such waste, *See before ch. 11. p. 127. F. N. B. 59 l. Kitchin, f. 244 b. Co. 2 part Inst. f. 303.*

If land be left to a Feme sole, and she take husband, who commits waste and die; she shall be punished for this waste, *F. N. B. 30. b. 3 E. 3. Tit. 20. Kitchin ubi supra. Co. ubi supra.*

But if the lease were made to the Husband

and Wife, and committs waste and ... In this case he shall not be punished ... such waste, unless she agree to the ... *Kitchin, ibid. Finch, l. 1. ch. 3. p. ... 48. part. Inst. f. 283.*

If there be two Joynt-tenants of a ward, ... one of them commit waste, both shall answer for it, *Co. 1 part Inst. fo. 54. a. 33 ... waste 6. Co. 2 part Inst. f. 305.*

An Infant and Baron and Feme shall be punished for waste done by a stranger, *Co. ... vide 15. H. 3. waste 19.*

If a Feme tenant for life take Husband, and the Husband doth waste, and the wife dieth; in this case he is not punishable for such waste; but if a Feme be possessed of a term of years, and take Husband who commits waste, and the Wife dies; here he shall be liable to an action of waste for the waste by him committed, because the Law giveth the term to him, *Co. ibid. vide Clifton's case, 35 El. Co. 5 l. f. 73. 49. E. 3. 15. 46 E. 3. waste Statham. 10. H. 6. 11. 12. vide Brownlow 1 part fo. 239 Co. 2. part Inst. 301.*

If Tenant for life grant over his Estate upon condition, and the Grantee doth waste, and the Grantor re-entereth for the condition broken, the action of waste

shall be brought against the grantee, and the place waſted recovered. Co. lib. 5. fol. 124. E. 3. 16.

If a leaſe be made to A. Villain, and waſte is done, and the Lord entereth; in this caſe the Lord ſhall not be puniſhed for waſte done before entry, but for waſte after he ſhall. Co. ibid. 48 E. 3. 19.

An Occupant ſhall be puniſhed for waſte, and ſo if an eſtate be made to A. and his Heirs during the life of B. and A. dies, his Heir ſhall be puniſhed in waſte. Co. ibid. and vide Co. lib. 5. fol. 7. La Dish and Ware caſe, and lib. 10. fol. 8. Herns Law of Conveyances.

If a leaſe be made to A. for life, the remainder to B. for life, and the remainder to C. in fee; in this caſe if A. makes waſte, no Action lieth againſt him during the life of B. but if B. dies, then an action of waſte lies againſt A. for the waſte done in the life of B. becauſe it was ad rebabitationem of him in remainder in fee, and now the Impediment (which was the meer Eſtate for life) is taken away. Co. 1. part Inſt. fol. 54. a. 50 E. 3. 3. 4 E. 3. 18. Perkins, 619. F. N. B. 58. c. and 59 H. 3. E. 3. waſte 144. 11 E. 3. Recch 118. 10 E. 4. 9. Regiſt. 74. Pages and Carter's caſe vouched

enched in Co.2. lib in Binghams case, f.92. and Co.5. l. f.76. Pagets case there, 35 El. in C.B. Abr. Mores rep. 62, 69. 2 part Inst. fo.301.

And where it is said in some Books, that he in remainder or reversion in fee shall not have an Action of waste, it is to be intended during the continuance of the mean remainder for life: again, where it is said in some other Books, that an Action of waste doth lie, it is meant after the death of him in remainder for life, and not otherwise, therefore nota. *Vide Pagets case ubi supra in Co.5. l. Herns Law of Con. p.53.*

If a lease for life be made, the remainder for years, the remainder in fee; here an Action of waste lies presently against the Tenant for life during the term in remainder, for this mean term for years is no impediment. *Finch, l.1.c.3. pag.29. Co.1 part Inst. fo.54.a. Vide Herns Law of Conv. pag. 50. and 53. Vide Brownlows 1 part Inst. fo. 301.*

But if a man make a lease for life or years, and after granteth the reversion for years, the lessor shall have no Action of waste during the years; for he himself hath granted away the reversion in respect whereof he is to maintain his Action: but

M 2 it

it is otherwise if he had made a leafe in reversion, which had been but a future Interest, for there an Action of waste lieth during the term, and the term shall be saved in that case. *Co. ubi supra*, and *Vide* 4. E. 3. 18.

If an Action of waste be brought, and pending the Writ the term end, yet the Writ shall not abate; for although the Plaintiff cannot recover the place wasted, yet he shall recover the treble damages. 11 *H.* 6. *fo.* 2. *F. N. B. fa.* 60 14 *H.* 8. *fo.* 11. *Kitchin fo.* 246. *b. Co.* 2. *part Inst. f.* 304.

And so where one that holds for term of another's life makes waste, and afterwards *Cestui que vie* dies; here the lessee shall recover damages, although he cannot recover the place wasted. *Co.* 1 *part. Inst. f.* 285. *a.* 11 *H.* 6. 43. 9 *E.* 4. 50.

If Tenant for life or years or their Assigns make a grant over, and yet take the profits; then an Action of waste lieth against him by him in reversion or remainder by the Statute of 11 *H.* 6. *c.* 5. *F. N. B. f.* 63. *Kitchin ubi supra.* 36 *El. in C. B. Bowser case, Co.* 5. 1. *f.* 77. *Co.* 2 *part Inst.* 302.

If waste be done in one Corner of a Wood, that only will be recovered; but if

it be *sparsim*, that is here and there in the Wood, then the whole Wood shall be recovered, or as much wherein the waste, *sparsim* is done, *Co. 1 part Inst. fo. 54. a. and 2 part. Inst. fo. 304. 4 E. 6. waste 136. 18 H. 6. 1. 15 H. 7. 11. 8 E. 3. waste 112. 4 E. 2. 14. 15 E. 2. waste 108. See Tempest E. 1. waste 122. and 134. Kitchin, fo. 246. b. Reformation Practicale, p. 343. Heirs Law of Conveyances, p. 54.*

And so in Houses, so many Rooms shall be recovered wherein there is waste done; but if the waste be done *sparsim*, through all, then all shall be recovered. *Co. 2 part Inst. fo. 54. a. 8 E. 2. waste 112. Co. 2 part. Inst. fo. 303. and 304.*

If a man make a lease for life, and by Deed grant that if any waste be done, that it shall be redressed by neighbours, and not by Suit or Plea, yet notwithstanding an Action of waste doth lie, for the place wasted cannot be recovered without Plea.

If a man make waste in cutting Trees which grow in Hedg-rows which inclose Pasture, nothing shall be recovered but *locus vastatus*, that is the Circuit of the Roots, and not the whole pasture: But if the Trees grew *sparsim*, scatteringly

about the Pasture, then the whole Pasture is forfeited if they be cut. 4 E. 6. *waste*. 13. *per Bromley, and Pasch*. 1650. *in* B.R. *per Just. Jermyn. Vide Regist. pract. p.* 343. *Co.* 2 *part Inst. fo.* 304. 18 H. 8. 1. *Reg. Practice ut supra.*

It is a good Plea in Bar to a Writ of waste, to say that the House fell by sudden Tempest, although the Termor did covenant to repair it; but it is no Plea in a Writ of Covenant, 43 E. 6. *f.* 6. *waste Kitchin, fo.* 247. *a.*

It is a good Plea in waste to say, that at the time of the lease made the house was ruinous, and the timber putrified and rotten, so that it fell; For if any of the principal Timber were rotten, it is no waste, though he did covenant to repair it. See before, *Chap.* 2. *p.* 14. *Kitchin, ubi supra*. 49 E. 3. *f.* 7. *waste.*

It is also a good Plea to say that the Plaintiff hath entred upon the land, before which Entry no waste was made; or that he Surrendred, and the Plaintiff did accept, before which time no waste was made. 8 H. 6. *f.* 27. *waste*, 8 *H.* 5. *fo.* 8. *waste*, *mes vide Co.* 1 *part Inst. fo.* 285. *a.*

It is no Plea to say, that at the day of the Writ purchased the House was sufficiently

only repaired, but he must say after the waste committed, and before the Writ purchased, it was sufficiently repaired; and that is a good Plea. 19 H. 6. fo. 66. Vide Co. Lit. fo. 282. a. and Kitchin f. 247. [illegible]

If the lessee doth waste, and after surrenders, and the lessor agrees, yet notwithstanding the lessor may have an action of waste, and recover the treble damages. 19 H. 6. 14. 11 H. 4. made 99. C. [illegible]

If an Action of waste be brought by Tenant and Feme in remainder in special Tail, and pending the writ the wife dieth without issue; now the writ in this case shall abate, because every kind of Action of waste must be [illegible] 16 E. 2. Brief 807. 11

If there be two joint-tenants of a Wood, Turbary, Pisary, or the like, and one of them doth waste against the will of the other; here the other may have an action of waste against him, and he shall make election, before judgment either to take his part in certainty by the Sheriff and the Oath of twelve men, &c. or that he grant that from thenceforth he shall not do waste, but according to his proportion

M 4 &c.

&c. and if he make choice of a certain place, then the place wasted shall be assigned to him. *Co.* 1 *part Inst. fo.* 200. *Westm.* 2 *chap.* 22. *Vide Regist.* [illegible] *Wingates Ab. Stat. p.* 552. *Pultons Mag. Charta fo.* 71. *b. Co.* 2 *part Inst.* [illegible]

And this doth extend as well to Tenants in common and Joynt-tenants for life, as to an Estate of Inheritance; but if one Tenant in common or Joynt-tenant out of a Dove-house destroy the whole Flight of Doves, no Action of waste doth lie in that case upon the Statute, but the other may have an Action of Trespass against him that destroyed them, *quare vi & armis Columbare* [illegible] *fregit,* & 200 *Columbas* [illegible] *Co.* 1 *part Inst. fo.* 200. [illegible]

If a Lease be made to hold to one without any impeachment of waste, then the lessee may cut down Trees, and convert them to his own use; but if the words be, to hold without impeachment for any action of waste, then in this case if the lessee cut down Trees, the lessor shall have them, for the discharge extends but to the Action. *Co.* 1 *part Inst. fo.* 220. *a. Vide Co. Reports, l.* 2. *fo.* 83. *l.* 9. *fo.* 9. *l.* 12. *fo.* 83.

If lessee for life grant a Rent-charge, and after doth waste, and the lessor recover in an action of waste, he shall hold the Land charged during the life of the Tenant for life; but if the Rent were granted after the waste done, the lessor shall then avoid the Grant made by the lessee for life. *Co. 1 part Inst. fo. 233. b. and 234.*

A Parson, Vicar, Arch-deacon, Prebend, &c. may have an Action of waste, and the Writ shall be said, *ad exheredationem Ecclesiæ, &c. ipsius* B. or, *Prebendæ ipsius* A. *Co. 1 part Inst. fo. 341. a. 10 H. 7. 3. F.N.B. 55. d. and 57. c.*

If Tenant in Fee release to his Tenant for life all his Right, yet he shall have an Action of waste. *Co. 1 part Inst. fo. 348 b. 42 E. 3. 23. F.N.B. 60. b. 41 E. 3. waste 83. 42 E. 3. 18.*

And if Tenant in tail make a lease for his own life, yet he shall have an Action of waste. *Idem ibid.*

But if Tenant for life be, the remainder to another in tail, and he in the Remainder release to the Tenant for life all his Right and State in the Land, in this case he cannot afterwards have an Action of waste. *Co. 1 part Inst. f. 345. b. 43 Ass. pl. 13.*

pl. 13. 41 E. 3. waste 83. 11 H. 4. 67. 13 H. 7. 10 Pla. com. 482.

If the lessor bring an Action of waste against his lessee, the lessee cannot plead generally *Nient en le Reverion*, but must shew how and by what means the reverion is devested out of him. *Co. 1. part. Inst. fo. 356. a. 40 E. 3. 20. 8 H. 6. 13. 30 H. 6. 7.*

But if the Grantee of a reverion bring an Action of waste, the lessee may plead generally that he hath nothing in the reverion. *Co. ubi supra.*

If a Bishop make a lease for life or years and dies, and the lessee, the See being void, doth waste; in this case the Successor shall have an action of waste. *Co. 1 part. Inst. fo. 356.*

And so if lessee for life be disseised and waste is done, and the lessee re-enters; here an action of waste lieth against him. *Co. ubi supra.*

If lessor and lessee for years, &c. joyn in the cutting down of 20 Oaks, &c. growing upon the Lands leased, the lessor shall not punish the lessee for the same. *Mich. 18 H. 8. 3. Perkins 202.*

If the lessee before his term begin, enter into the Lands let to him, and do an act which

[illegible] waste, the lessor
shall not have an action of waste for the
[illegible]
[illegible] shall have judgment to recover
in an action of waste, where the waste
comes but to twelve pence or such a petty
sum; The [illegible] *Lex Finch, l.*
[illegible] fol. 29.

If waste be done upon Lands let for term of years or life, by one against whom the lessee can have no remedy in Law for committing the same waste; the lessee in such case is not punishable for the same by the lessor; except there be a special Covenant in the Lease, that he shall not commit nor suffer waste to be done. *Co. 2 part Inst. fol.* 303. *Regist. prac.* 343.

Note well, what hath been here said concerning Guardians in Chivalry and their wards, is but onely to shew what the Law was formerly in those cases: for now the Statute of 12 *Car.* 2. *chap.* 24. Wardship (that former undoing of many Gentlemen) *Primer Seisins*, and all *Ouster le mains*, &c. are quite taken away, and all hold now in fee and common Soccage; and every Father, whether he be at age of 21 years or under, may by Deed executed in his life time, or by his last Will and

CHAP. XIII.

An Abridgement of the Statute of the 43. Eliz. and the 15. of Car. 2. about the unlawful cutting, stealing, or spoiling of Wood, &c. necessary for all Gentlemen to know.

IF any shall be convicted by his own confession, or by the testimony of one Witness upon Oath, before one Justice of Peace, or Head-Officer, to have unlawfully cut or taken away any Grain growing, robbed any Orchard or Garden, digged up or taken any Fruit-Trees, broken any Hedges, Pales, or other Fences, cut or spoiled any Woods or Underwoods, standing and growing, or the like, or to have been accessory thereunto, he shall, within such time as the Justice or Head Officer shall appoint, pay for the first offence to the party grieved so much as the Justice or Head Officer shall set down: and in case the party offending be not able to pay it, or do it not exceeding 10 Order, then the Offender is by them or either of them (respectively)

(respectively) to be committed to the Constable, or other Officer of the Place where the Offence was committed, or the party apprehended to be whipped, and so for every offence after warrant thereof as aforesaid, the offender is to have the like punishment of whipping [illegible].

If the Constable refuse or neglect to whip the offender, then such Justice of Peace or Head Officer may commit him to Prison without Bail, till he whip or cause to be whipped the party offending, as above declared.

No Justice may execute this Statute for offences done to himself, unless he be associated with one or more Justices of Peace whom the business doth not concern, *Stat.* 43 *El. c.* 7.

Now the Statute of 15 *Car.* 2. is an additional Act to this, as followeth:

That every Constable, Headborough or other person in every County, City, Town corporate, or other place where they shall be officers or inhabitants shall have power to apprehend or cause to be apprehended such as they suspect for having or carrying, or any ways conveying any burthen or bundles of any kind of wood, underwood, Poles or young Trees, Bark or Bast

of

Trees, or any Gates, Styles, Polls, Pales, Rales, or Hedgwood, Broom, or Furze.

If any person be suspected to have any such wood, underwood &c. any Owner, by warrant under the hand and Seal of one Justice, may enter by vertue thereof into the Houses out-houses, Yards, Gardens, or other places belonging to such persons, and whersoever they find any such, they may apprehend those persons, and also those who are suspected to have cut and taken the same, and carry them before a Justice of the Peace of the County, City, &c. and if he in whose custody such wood, &c. is found cannot give a good account, which may be satisfactory to the Justice, how he came by the same with the consent of the Owner, or do not within a convenient time set down by the Justice, produce the party of whom he bought the same wood, under-wood, &c. or some other credible Witness to depose upon oath such Sale of the said Wood, underwood, &c. (which the Justice may administer;) that then the said person shall be deemed convict of the said offence of cutting and spoiling of the same woods, under-woods, &c. within the meaning

ing of the before recited Statute of the 43 of Eliz. and be liable to the punishment therein contained; and to pay over and above down presently, to the use of the Overseers of the Poor of the place where the offence is committed, for the first offence, such a sum, not exceeding ten shillings, as the Justice shall appoint. And if the offender shall not perform the Justice's order herein to the owner, and also to the Overseers of the Poor, then the Justice is to commit him to the House of Correction, for so long (not exceeding one Month) as he shall think meet, or to be whipt by the Constable or other officer, as the Justice shall think most expedient. And if such person shall again offend in the like kind, and be convicted as before, then he must be sent to the House of Correction for one month, and be there held to hard labour. And if he do offend the third time, and be convicted as before, then he shall be taken, adjudged and deemed as an incorrigible Rogue.

If any buy any burthens of wood, &c. (as before named) which may be justly suspected to have been stolen or unlawfully come by, any Justice, Mayor, Bayliff or Head-Officer within his Jurisdiction, may, upon

upon complaint to him made, examine the matter upon oath, which they may administer: and if he find that the same was bought of one that may be justly suspected to have stoln or unlawfully come by the same, he may then order the party that bought the same, to pay treble the value to the party from whom they were stoln or unlawfully come by; and in default of present payment thereof, issue out his Warrant to levy the same by Distress and sale of the offenders goods, rendring the overplus to the owner of such goods; and for lack of such distress, to commit the party to the Goal, there to remain without Bail for the space of one month at his own charges.

Note, that no man is to be punished by this Law, that hath been punished by a former Law for the same offence: nor is any man to be questioned for any offence in this Statute, unless he be questioned for the same within six weeks after the offence is committed.

FINIS.

upon complaint to him made examine the matter upon oath, which he may administer: and if he find that the same was bought of one that may be justly suspected to have stoln or unlawfully come by the same, he may thereupon [order] the party that bought the same, to pay double the value to the party from whom they were stoln or unlawfully come by, and in default of sufficient payment thereof, to issue his Warrant to levy the same by distress and Sale of the offenders goods, rendring the overplus to the owner of such goods; and for lack of such distress, to commit the party to the Goal, there to remain without Bail for the space of one month at his own charges.

Note, that no man is to be punished by this Law, that hath been punished by a former Law for the same offence; nor is any man to be questioned for any offence in this Statute, unless he be questioned for the same within six weeks after the offence is committed.

FINIS.

A Table of the chief matters contained in this Book.

What

Licenſe.

Limitation.

Livery and Seiſin.

Mortmain.

Rent.

Replevin.

Trees.

Trespass.

Waste.

Withernam.

Wood.

FINIS.